

1 All right. Other matters, before we resume our
2 jury selection -- our case presentation? I would suggest we
3 take a short recess; but, I'll hear if there are other
4 matters that need to be presented, before we bring the jury
5 in.

6 MR. COTTRELL: I have one brief matter, Your Honor.

7 THE COURT: All right.

8 MR. COTTRELL: That is, yesterday, during the
9 defendant's cross examination of Investigator Ledford, he
10 identified this photo line-up, which I propose to mark as
11 State's Exhibit No. 8, as the original line-up he had shown
12 to Ms. Theresa Savall. I would move to admit that into
13 evidence, since he's already identified that as the line-up,
14 on the stand, under examination of the defense.

15 THE COURT: What was State's Exhibit No. 3?

16 MR. COTTRELL: State's Exhibit No. 3 was a copy,
17 shown to Ms. Savall, of the line-up. The officer testified
18 that this photo line-up is the original.

19 THE COURT: All right. What says the defendant on
20 the admission of State's Exhibit No. 8, without asking the
21 defense to abandon the contention of the photo line-up,
22 again?

23 MS. THOMAS: I OBJECT to it. The evidence has
24 already been closed; a ruling has been made; and, I would

25 oppose the admittance of that, at this time.

1 THE COURT: Was that the actual item which was
2 identified by the officer, while he was testifying on the
3 stand, as the original photo array shown to Theresa Savall?

4 MR. COTTRELL: Yes, Your Honor. It was.

5 THE COURT: Well, that's sufficient to, I think,
6 to allow its admissibility into evidence and may be presented
7 to the Court for admission, even after the witness
8 identifying it has testified. So, I'll allow it to be
9 admitted then.

10 Do you wish to offer it, in the presence of the
11 jury? I will be inclined to allow it.

12 MR. COTTRELL: Thank you, Your Honor. I will
13 identify it as State's Exhibit No. 8.

14 THE COURT: All right. Okay. Anything else?
15 Anything else from the state?

16 MR. COTTRELL: No, Your Honor.

17 THE COURT: Anything else from the defendant?

18 MS. THOMAS: No, Your Honor.

19 THE COURT: We'll take a recess until 11:00 --
20 let's see, I guess our jury has been cooped up since 10:00.
21 Sheriff, I will advise you please to tell the jury they can
22 have a 10-minute recess. We have finished matters that
23 needed to be conducted out of their presence and we'll be
24 ready to resume, after the recess, at 11:00. You can gather
25 them back up at 11:00 and take them to the jury room.

1 We'll be in recess until 11:00.

2 {Court stands in recess.}

3 {Court reconvenes.}

4 THE COURT: All right. All parties are present.
5 Anything for the state, before the jury is brought in?

6 MR. COTTRELL: No, Your Honor.

7 THE COURT: Anything for the defendant?

8 MS. THOMAS: No, Your Honor.

9 THE COURT: Sheriff, let's have the jury, please.

10 {Thereupon, the following proceedings take place in open
11 court, in the presence of the jury, at 11:08 a.m.}

12 THE COURT: All of our jurors are present.
13 Members of the jury, I'm sorry that I kept you in the jury
14 room so long. My estimation of the time it would take to
15 complete the matter that we were working on was incorrect, I
16 would say, mildly. I apologize for that. I'll assure you
17 that we started on time and were working diligently. And so,
18 I'm sorry that we had to keep you waiting.

19 We're not ready to proceed though, Members of the
20 jury. And, as I recall, the state had completed its
21 presentation of witness, Officer Ledford. And, the state may
22 then call its next witness.

23 [State's Exhibit No. 8 is marked for identification.]

24 MR. COTTRELL: Before we do, we would MOVE INTO

25 EVIDENCE, the original copy of the photo line-up presented to

1 Ms. Theresa Savall, that has been identified as State's
2 Exhibit No. 8.

3 THE COURT: All right. Who was it that identified
4 this, sir?

5 MR. COTTRELL: Investigator Ledford, the last
6 witness.

7 THE COURT: All right. I'll note an OBJECTION for
8 the defense. Do you wish to be heard further, Ms. Thomas?

9 MS. THOMAS: No, Your Honor.

10 THE COURT: All right. Over objection of the
11 defendant, State's Exhibit No. 8 WILL BE ADMITTED.

12 MR. COTTRELL: Your Honor, the state's next witness
13 is Officer J. J. O'Janiit.

14 THE COURT: All right. If you would, come around.

15 [WITNESS SWORN.]

16 OFFICER J. J. O'JANIIT, BEING FIRST DULY SWORN, TESTIFIES AS
17 FOLLOWS DURING DIRECT EXAMINATION BY MR. COTTRELL:

18 Q. Officer O'Janiit, please state your name, for the Court?

19 A. My name is Officer J. J. O'Janiit.

20 Q. Officer O'Janiit, how long have you been a police officer,
21 sir?

22 A. For eight years.

23 Q. And, were you so employed and on duty on May 22, 1998?

24 A. Yes, sir. I was.

25 Q. And, on that date, did you respond to a robbery call at

1 5206-B Cherrycrest Lane?

2 A. Yes, sir. I did.

3 Q. And, about what time of day did you respond to that
4 address?

5 A. I believe it's in the morning. I would have to look at
6 the actual complaint numbers to give you an exact time and
7 what time I was dispatched.

8 Q. Okay.

9 MR. COTTRELL: May I approach the witness, Your
10 Honor?

11 THE COURT: All right.

12 Q. Sir, I'm showing you what's been marked for identification
13 purposes as State's Exhibit No. 5. Do you recognize that
14 document, sir?

15 A. Yes. I do.

16 Q. And, what is that, please?

17 A. A supplemental report, prepared by me; my investigation.

18 Q. And, is that in relation to this case?

19 A. Yes, sir. It is.

20 Q. Does it have the complaint number for this case on it?

21 A. Yes. It does.

22 Q. Could you please explain to the jury what a complaint
23 number is and how it's generated?

24 A. Each time a person calls the police, the police department

25 computer-generates a number as to what time we received the

1 call. The complaint number would be the year, first; your
2 month; and then, your date of occurrence; then, your time the
3 call is received; and then, which number call it was at that
4 particular hour. We had two calls 10:28, you would have "01"
5 or "02" at the end of the call.

6 Q. And, what's the complaint number associated with this
7 case?

8 A. The complaint number is 980522102800.

9 Q. And, based on your understanding of complaint numbers,
10 what does that tell you?

11 A. That the call was received at 1028 hours, on the 22nd day
12 of May 1998.

13 Q. And, how soon after receiving the call did you respond to
14 the scene; approximately?

15 A. Immediately upon receiving the call, I responded; you
16 know, within maybe five, ten minutes after the call had come
17 in.

18 Q. Did you speak to anyone at that address?

19 A. Yes. I did.

20 Q. And, who did you speak to?

21 A. The victim, Samantha Wood.

22 Q. Is she in the courtroom now?

23 A. I believe she's in the back of the courtroom.

24 Q. Okay. Officer O'Janiit, do you remember what Ms. Wood's
25 general demeanor was when you arrived at the scene?

1 A. From what I recollect, upon my arrival, she was visibly
2 shaken; very upset.

3 Q. And, did you have a conversation with Ms. Wood about what
4 had happened?

5 A. I did.

6 Q. Okay. And, did you take a statement from her on that day?

7 A. Yes, sir. I did.

8 MR. COTTRELL: May I approach, Your Honor?

9 THE COURT: All right.

10 [State's Exhibit No. 9 is marked for identification.]

11 MR. COTTRELL: May I approach the witness, Your
12 Honor?

13 THE COURT: Yes, sir.

14 Q. All right. Sir, I'm giving you two sheets of paper. They
15 are marked collectively as State's Exhibit No. 9. What is
16 that, sir?

17 A. This is a statement I took from the victim.

18 Q. And, whose handwriting is that statement, sir?

19 A. It's my handwriting.

20 Q. Do you recall when you took that statement?

21 A. Yes. It was on the date the incident occurred.

22 Q. Was the victim with you when you were writing it down or
23 was this --

24 A. This was after the incident; just after -- upon my
25 arrival.

1 Q. My question is, sir, was the victim with you when you were
2 preparing this; or, was this afterwards?

3 A. No. She was with me.

4 Q. Have you had a chance to read that statement, prior to
5 this court date?

6 A. Yes, sir.

7 Q. Okay. And, upon your review of it, are all the instances
8 contained in that statement true and accurate to the best of
9 your knowledge?

10 A. Yes, sir. They are.

11 Q. Has this statement been changed in any way, shape or form,
12 since you took it that day?

13 A. No, sir. It has not.

14 MR. COTTRELL: All right. At this point, the state
15 would MOVE INTO EVIDENCE, State's Exhibit No. 9.

16 THE COURT: Does the defense wish to be heard?

17 MS. THOMAS: No, Your Honor. No objection.

18 THE COURT: LET State's Exhibit No. 9 BE ADMITTED.

19 Q. Officer, would you read that statement to the jury,
20 please?

21 A. [Reading.]

22 "This statement is being written for me by J. J.
23 O'Janiit, whom I understand is an officer with C.M.P.D. This
24 statement is true and accurate, to the best of my
25 recollection.

1 On 22 May '98, I was walking up to my apartment and
2 a Black male approached me from behind; grabbed my baby and
3 put a gun to her head.

4 The suspect then told me to get inside the
5 apartment. I went inside the apartment and put my baby down
6 and the Black male --

7 I went inside the apartment and put my baby and the
8 Black male put the other baby down because she was crying.
9 He then told me to make the baby stop crying. I picked the
10 baby up but she would not stop crying.

11 The Black male then told me to get up and go into
12 the bedroom. When I did he threw me on the bed and said,
13 'Give me some, bitch.' I told him I couldn't because I was
14 having my period. He made me pull up my dress and show him.

15 The suspect then got off the bed and walked into..."
16 We're missing part of it from this copy you have
17 here; it's missing the rest of my statement. You're missing
18 probably the last words on the right-side of the page.
19 That's why we're missing some words on this.

20 Q. Okay.

21 A. I can read you most of it.

22 MR. COTTRELL: May I approach the witness, Your
23 Honor?

24 THE COURT: All right.

25 A. There should be more.

1 [State's Exhibit No. 10 is marked for identification.]

2 Q. Officer O'Janilt, let's try again. I'm handing you
3 another two pieces of paper. These are marked as State's
4 Exhibit No. 10.

5 What do those appear to be?

6 A. This is the actual statement or a copy of the actual
7 statement.

8 Q. And, once again, officer, is that the same statement that
9 Exhibit No. 9 was?

10 A. Yes. It is.

11 Q. And, are all the entries in State's Exhibit No. 10 true
12 and correct to the best of your knowledge?

13 A. Yes. They are.

14 MR. COTTRELL: Your Honor, state would MOVE TO
15 ADMIT, State's Exhibit No. 10.

16 THE COURT: State's Exhibit No. 10 is the same as
17 9, except 10 is complete, where as 9 cuts off some words. Is
18 that correct?

19 MR. COTTRELL: That is correct.

20 THE COURT: All right. Defense wish to be heard
21 on the admission of 10?

22 MS. THOMAS: NO OBJECTION.

23 THE COURT: LET State's Exhibit No. 10 BE
24 ADMITTED.

25 Q. What is the condition of the copy in State's Exhibit No.

1 10?

2 A. Its condition, it looks like it's got most of the rest of
3 what was missing from this page.

4 Q. All right. Could you go back to where you left off and
5 continue to read from there?

6 A. [Reading.]

7 "I told him I couldn't because I was having my
8 period. He made me pull up my dress and show him. The
9 suspect then got off the bed and walked over to my jewelry
10 box and asked, 'Where is your money?' I told him I didn't
11 have any and asked where my purse was.

12 The suspect removed \$60.00 from my purse and made
13 me open the closets so he could look through them.

14 Afterwards, he brought me back into the living room, pushed
15 me on to the floor and said if I called the police he would
16 be outside watching and he could come back to kill me.

17 He then stated he knew my schedule and that he knew
18 when I left at 4 o'clock in the morning. I did leave this
19 morning at 4 o'clock and returned at 4:30 a.m.

20 The suspect was a Black male, approximately five-
21 nine, 180 pounds, with his hair pulled back from his face and
22 four small braids on the back of his head. He was wearing a
23 red shirt and blue-jean shorts."

24 Q. Is there anything else to that statement?

25 A. [No verbal response.]

1 Q. Any other writing on that statement?

2 A. Just a line drawn diagonally across the page, with the
3 victim's signature and the dates that the statement was
4 taken.

5 Q. And, what was the date that the statement was taken?

6 A. May 22, 1998.

7 Q. While you were still there at the scene that day, what
8 else did you do, sir?

9 A. While at the scene, we took her statement; we called for a
10 crime scene officer to respond and attempt to process the
11 scene for any evidence. And then, a few other officers came
12 out in the area and canvassed for possible witnesses or
13 suspects.

14 Q. All right. When is the next time that you saw Ms. Wood?

15 A. On the 23rd of May.

16 Q. And, where did you see Ms. Wood that day?

17 A. She came to our team office.

18 Q. Why did she do that?

19 A. I had contacted her to come to the office to view a photo
20 line-up.

21 Q. Officer, is this photo line-up -- is the photo line-up
22 you're referring to one you had personally prepared?

23 A. No, sir. It is not.

24 Q. Okay. How did you go about getting this photo line-up?

25 A. I contacted an investigator at the main Law Enforcement

1 Center down here, who generated a photo line-up on the
2 computer system and prepare it for me.

3 Q. And, where did you go to pick up the photo line-up?

4 A. I responded to the Law Enforcement Center and retrieved
5 the line-up.

6 MR. COTTRELL: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 Q. Let me s how you what has been identified as State's
10 Exhibit No. 6. Do you recognize that document, sir?

11 A. Yes, sir. I do.

12 Q. What is it, please?

13 A. It's the photo line-up I showed to the victim.

14 Q. Is that the original photo line-up or is that a copy?

15 A. That is my original.

16 Q. Has there been any changes made to that photo line-up
17 since it last left your possession?

18 A. No, sir. It is not.

19 Q. Are there any -- all the entries on it, true and accurate
20 to the best of your recollection?

21 A. Yes, sir. They are.

22 MR. COTTRELL: Your Honor, the state would MOVE TO
23 ADMIT, State's Exhibit No. 6.

24 THE COURT: Defense wish to be heard?

25 MS. THOMAS: No objection.

1 THE COURT: All right. LET State's Exhibit No. 6
2 BE ADMITTED.

3 Q. Officer, could you explain to the jury how you went about
4 showing this particular photo line-up to Ms. Wood?

5 A. When I received the photo line-up I asked the victim to
6 come into the office. When she arrived, we went into the
7 conference room. I advised her that I was going to show her
8 a series of photos that may or may not be including a picture
9 of a suspect.

10 Q. And, where was the photo line-up when you were explaining
11 this to her?

12 A. I was holding the photo line-up. And, after I explained
13 it to her, I gave it to her.

14 Q. Officer, were you aware which picture was the defendant's
15 picture in that line-up?

16 A. Yes, sir. I was.

17 Q. Which picture is that, please?

18 A. The picture in the upper-right-hand corner of the photo
19 line-up.

20 Q. Were you in a position where you could observe Ms. Wood as
21 she looked at the photo line-up?

22 A. Yes. I was.

23 Q. And, what did you observe when she did so?

24 A. When I gave her the line-up she looked at it for several
25 seconds. And then, identified the individual in the top

1 portion, top-right-hand portion of my photo line-up, as the
2 suspect.

3 Q. And, whose picture did she identify?

4 A. The defendant.

5 Q. How long did she spend looking at the photo line-up,
6 total, do you think, before she focused on the defendant's
7 picture?

8 A. Maybe five seconds, ten seconds.

9 Q. Did she make any comments to you about that photo?

10 A. She did.

11 Q. What were those comments, sir?

12 A. She stated that she believed that was the suspect; looked
13 most like him; except, in the photo, he has a beard and at
14 the time of the occurrence, he did not have a beard; and that
15 at the time of the occurrence, he had braids in his hair;
16 and, in this particular photo, he did not have braids.

17 Q. Can you see the back of any of those subjects' heads in
18 the photo line-up?

19 A. No. You can not.

20 Q. Did you make any notations on the photo line-up?

21 A. Yes, sir. I did.

22 Q. Okay. And, what note on the photo line-up itself did you
23 make?

24 A. I circled the picture which the victim had pointed out.

25 And, next to the circling, I wrote my comments she said.

1 "This looks most like him; except for no beard and has
2 braids"?

3 Q. Did the victim, Ms. Wood, write anything on the photo
4 line-up?

5 A. No. She did not.

6 Q. Did you bring any other photo line-ups to show to the
7 victim that day?

8 A. No. I did not.

9 Q. Okay. Did you bring anything else with you, when you
10 showed the victim this line-up?

11 A. I may have had other papers in my hand. This was the only
12 line-up she would have saw. However, I did have papers in my
13 hand that would have been duplicates of this line-up and
14 biographical information on the other individuals.

15 Q. While in your presence, did you ever show Ms. Wood another
16 line-up containing the defendant's picture?

17 A. No. I did not.

18 Q. Did you ever show her any other line-up, besides that one
19 in front of you?

20 A. No. I did not.

21 Q. Do you have any personal knowledge of other officers
22 showing Ms. Wood photo line-ups?

23 A. No, sir.

24 Q. And sir, did you complete a supplemental report about when
25 you showed Ms. Wood that line-up?

1 A. Yes. I did.

2 Q. And, could you hold that supplemental report up and say
3 for the record what it's been marked as?

4 A. It is marked as State's Exhibit No. 5.

5 Q. Can you take just a moment to look over that document,
6 sir?

7 Does that also contain what the victim said to you
8 about the photo line-up?

9 A. Yes. It does.

10 Q. And, when did you prepare that supplemental report, in
11 relation to when you showed the photo line-up?

12 A. I prepared it the same time, that day.

13 Q. What did you record that the victim said in that exhibit?

14 A. Do you want me to read the entire --

15 Q. Just the portion relating to what she said when shown the
16 line-up?

17 A. [Reading.]

18 "Officer O'Janiit told me there were a series of
19 photos for me to look at to see if any of the subjects was
20 the suspect that robbed me.

21 I looked at the photos and told the officer that
22 one of the subjects looked like the suspect, except that the
23 suspect had longer hair, with braids and he did not have a
24 beard."

25 Q. Have you shown Ms. Wood any other photo line-ups since May

1 23rd?

2 A. No, sir. I have not.

3 Q. Have you had any contact with Ms. Wood since May 23rd?

4 A. No, sir.

5 MR. COTTRELL: May I have just a moment, Your
6 Honor?

7 THE COURT: All right.

8 MR. COTTRELL: No further questions.

9 THE COURT: Cross examination.

10 MS. THOMAS: Thank you, Your Honor.

11 [CROSS EXAMINATION OF OFFICER O'JANIIT, BY MS. THOMAS:]

12 Q. Officer O'Janiit, I call your attention to State's Exhibit
13 No. 8, the statement signed by Ms. Samantha Wood.

14 A. I've got 9 and 10.

15 THE COURT: No. 9 I believe is the statement you
16 may be referring to.

17 MS. THOMAS: That is correct.

18 Q. On State's Exhibit No. 9, could you read the last sentence
19 on the second page, beginning with, "The suspect..."

20 A. [Reading.]

21 "The suspect was a Black male, five-nine, 180
22 pounds with his hair pulled back from his face and four small
23 braids on the back of his head. He was wearing a red shirt
24 and blue-jean shorts."

25 Q. Now, this is the victim, Ms. Wood's only statement?

1 A. I'm sorry.

2 Q. This is the victim's statement?

3 A. Yes, ma'am.

4 Q. And, she said his hair was pulled back from his face. Is
5 that correct?

6 A. Yes, ma'am.

7 Q. And, four, small braids?

8 A. Yes.

9 Q. And, she did count the number of braids?

10 A. She stated to me, "...four, small braids."

11 Q. And, "four" appears on your statement?

12 A. Yes, ma'am.

13 Q. And, she said his hair was pulled back from his face. Is
14 that correct?

15 A. That's correct.

16 Q. Would that indicate that this person had long hair?

17 MR. COTTRELL: OBJECTION.

18 THE COURT: Well, I'll SUSTAIN that form of the
19 question. SUSTAINED.

20 Q. Going back to the fourth -- the first page of Exhibit No.
21 9, the ninth line, up, isn't it a fact that the statement
22 says, [Reading.]

23 "The suspect looked into my jewelry box."

24 A. Yes, ma'am.

25 Q. And, isn't it a fact that it says, "The suspect removed

1 \$60.00 from my purse"?

2 A. Yes, ma'am.

3 Q. And, did Ms. Wood tell you that the suspect was in her
4 apartment for approximately 30 minutes?

5 A. I don't really recollect her advising me of a particular
6 timeframe.

7 Q. But, based on her statements, the suspect was in there for
8 a period of time. Is that correct?

9 A. Yes, ma'am.

10 Q. And, the suspect was not wearing gloves. Is that correct?

11 A. She did not advise me of that.

12 Q. The suspect was not wearing a disguise or a mask of any
13 kind. Is that correct?

14 A. Didn't advise that either.

15 Q. And, crime scene was called to the apartment; were they
16 not?

17 A. Yes, ma'am.

18 Q. And, crime scene is obtaining or attempting to obtain
19 fingerprints. Is that correct?

20 A. Yes, ma'am.

21 Q. And, to your knowledge, no fingerprints came back matching
22 those of Shawn Massey. Is that correct?

23 A. Not to my knowledge.

24 Q. And, to your knowledge, no physical evidence exists that
25 shows Shawn Massey was ever present in that apartment. Is

1 that correct?

2 A. I'm not aware of him collecting any evidence, if that's
3 what you're asking me.

4 Q. To your knowledge, no physical evidence exists which links
5 Shawn Massey to that apartment. Is that correct?

6 A. That's correct.

7 Q. And, Officer O'Janiit, is it not true that Ms. Wood
8 described this person as wearing a red shirt. Is that
9 correct?

10 A. Yes, ma'am.

11 Q. And, blue-jean shorts. Is that correct?

12 A. Yes, ma'am.

13 Q. And, going back to the photographic line-up, you're not
14 sure of the origin of that photographic line-up; are you?

15 A. State's Exhibit No. 6?

16 Q. Yes.

17 A. Is that what you're referring to?

18 Q. Yes.

19 A. Yes, ma'am. I received it from the robbery division of
20 Law Enforcement Center.

21 Q. Do you know which officer composed the line-up?

22 A. No, ma'am.

23 Q. And, isn't it a fact that when a positive I.D. is made,
24 the witness is asked to sign and date the photograph that is
25 I.D'd?

1 A. I don't believe that's a policy of our department. I can
2 tell you what I did; but, I can't give you information as to
3 other officers' policies.

4 Q. This is your one and only photo line-up that you've ever
5 conducted?

6 A. Yes, ma'am.

7 Q. Is that not true?

8 A. Yes, ma'am.

9 Q. And, isn't it a fact that Ms. Wood's words were, "This one
10 looks the most like the person, except he did not have
11 braids"?

12 A. [No verbal response.]

13 Q. "...except, with braids."

14 A. [No verbal response.]

15 Q. Do you have the exhibit in front of you?

16 A. Yes, ma'am.

17 Q. Is that your circle?

18 A. Yes, ma'am. It is.

19 Q. Is that Ms. Wood's writing on markings on there anywhere?

20 A. No.

21 Q. Does it?

22 A. It does not.

23 Q. The only markings on there are your markings?

24 A. Yes, ma'am.

25 Q. And, read the notation beside the photograph?

1 A. The photograph is circled and my notation says, "Said this
2 looks most like him except for no beard and braids."

3 Q. So, she did not identify him. Is that correct?

4 A. She identified this subject to me, stating she believed
5 that was him, except he has no braids -- he has braids and
6 does not have a beard.

7 Q. But, looking the most like someone is not a positive I.D.;
8 is it?

9 A. Ma'am, that's a question you have to ask her.

10 Q. I'm just asking you, as an officer.

11 A. As an officer, her statement to me she believed that was
12 the suspect, except in this particular photo, he has no
13 braids and that he does not have a beard at this time.

14 Q. The words "believe he is the suspect," does not appear on
15 any of your supplement reports. Is that correct?

16 A. [No verbal response.]

17 Q. The only thing I'm seeing is, "He looks like the suspect."

18 A. That's correct.

19 Q. And one, "He looks the most like the suspect."

20 A. That's correct.

21 Q. Except, the suspect had longer hair, with braids?

22 A. That's correct.

23 Q. And, how early were you present?

24 A. I was the initial officer, responding to the call.

25 Q. And, did you follow the investigation, through the follow

1 up?

2 A. No. Well, what do you mean by the follow-up?

3 Q. Are you familiar with the interviews conducted by Officer
4 Esposito?

5 A. No, ma'am.

6 Q. You're not aware of any other evidence, any other
7 eyewitness evidence, putting Shawn Massey in that apartment;
8 are you?

9 A. Not in the apartment; no, ma'am.

10 Q. Thank you.

11 MS. THOMAS: No further questions.

12 THE COURT: Re-direct?

13 MR. COTTRELL: No further questions, Officer.

14 THE COURT: Thank you, sir. You can step down.

15 The state may call it's next witness.

16 MR. COTTRELL: Your Honor, the state will call
17 Officer Mark Wilson.

18 MS. THOMAS: Your Honor, may we approach?

19 THE COURT: Yes.

20 {Conference at sidebar, outside the hearing of the jury, with
21 all attorneys present.}

22 {Thereupon, the following proceedings take place in open
23 court, in the presence of the jury.}

24 THE COURT: All right. Are you ready to proceed?

25 MR. COTTRELL: The state calls Officer Wilson.

1 [WITNESS SWORN.]

2 MARK WILSON, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS

3 DURING DIRECT EXAMINATION BY MR. COTTRELL:

4 Q. Officer Wilson, please state your name for court and spell
5 your last name for the Court Reporter.

6 A. It's Mark Wilson, W-I-L-S-O-N.

7 Q. And sir, how are you employed?

8 A. I am a Crime Scene Search Technician with the Charlotte-
9 Mecklenburg Police Department.

10 Q. And, how long have you been a Crime Scene Search
11 Technician?

12 A. Thirteen years.

13 Q. And, on May 22, 1998, did you respond to a call for
14 service at 5206 Cherrycrest Lane?

15 A. Yes, sir.

16 Q. And, who called you there, sir?

17 A. I was dispatched by a police dispatcher.

18 Q. Okay. And, what did you find on the scene when you
19 arrived there?

20 A. When I arrived at the scene, I found Officer O'Janiit at
21 the scene and also the victim, Samantha Wood.

22 Q. Could you please describe to the jury, sir, what you did
23 when you got there to the scene?

24 A. When I arrived, I observed a 2-story apartment building;
25 Unit B was at the rear of the building; it was a 1-story

1 unit, labeled "B." I made an examination of the front door
2 for any signs of forced entry. I did not see any signs of
3 forced entry.

4 I did a general walk-through of the overall scene.
5 I photographed the front door and the over-all scene. I also
6 processed the front door of Unit B and the rear bedroom door
7 for latent prints. And, I did not collect any prints.

8 Q. So, after testing both the front door and the door to the
9 bedroom, you were unable to raise any prints at all?

10 A. Yes, sir. That's correct.

11 Q. And, looking over the scene, did you see any other items
12 that could be seized as evidence in this case?

13 A. No, sir.

14 Q. And, did you seize any other items, sir?

15 A. No, sir.

16 Q. In your 13 years, sir, as a Crime Scene Search Technician,
17 about how many breaking and entering scenes do you think
18 you've processed for prints?

19 A. Probably in excess of 750.

20 Q. And, in your experience, would you characterize it as
21 abnormal to respond to a scene and find no prints at all?

22 A. No, sir.

23 MS. THOMAS: OBJECTION.

24 THE COURT: OVERRULED.

25 A. No, sir.

1 Q. Why is that, sir?

2 A. A latent print is very fragile; a lot of environmental
3 factors; surface that it's on. There are a lot of things
4 that can interrupt a latent print being laid on a surface.
5 And, my collection is limited to fingerprint powders.

6 Q. About how long did you spend at the scene that day, sir?

7 A. Approximately 30 minutes.

8 Q. And, did you do anything else regarding the investigation
9 of this case, after you left the scene, sir?

10 A. I completed my photo jacket for the evidence I took and
11 also completed a supplement form.

12 Q. All right. Thank you, sir.

13 MR. COTTRELL: No further questions.

14 THE COURT: Cross-examination.

15 MS. THOMAS: Thank you, Your Honor.

16 [CROSS EXAMINATION OF OFFICER WILSON, BY MS. THOMAS:]

17 Q. Officer Wilson, isn't it a fact that nothing you found in
18 this apartment linked Shawn Massey to that apartment?

19 A. I did not collect any physical evidence from the scene.

20 Q. Do you know of any evidence that associates Shawn Massey
21 with that apartment?

22 A. No, ma'am.

23 Q. Were any fingerprints of Shawn Massey obtained from that
24 apartment?

25 A. I did not collect any latent fingerprints from Apartment

1 B.

2 Q. Did anyone else, to your knowledge, attempt or collect
3 fingerprints?

4 A. No, ma'am.

5 Q. So, there are no fingerprints associating Shawn Massey to
6 that apartment. Is that correct?

7 A. I do not know of any.

8 MS. THOMAS: Thank you, Officer Wilson.

9 THE COURT: Re-direct?

10 MR. COTTRELL: Nothing further.

11 THE COURT: Does the state have any further need
12 of this officer as a witness?

13 MR. COTTRELL: No, Your Honor. We would ask that
14 he be excused. I would also ask that Officer O'Janiit be
15 excused.

16 THE COURT: Any objection?

17 MS. THOMAS: No, Your Honor.

18 THE COURT: All right. Officer O'Janiit may also
19 be excused.

20 MR. COTTRELL: That's the evidence for the state.

21 [STATE RESTS, at 11:40 a.m.]

22 THE COURT: Counsel approach the bench, just a
23 second.

24 {Conference at sidebar, outside the hearing of the jury, with
25 all attorneys present.}

1 {Thereupon, the following proceedings take place in open
2 court, within the hearing of the jury.}

3 THE COURT: You may proceed, the state having
4 rested.

5 MS. THOMAS: Your Honor, Mr. Massey's first witness
6 we would call is Mr. Brady Dorsey.

7 THE COURT: All right.

8 [WITNESS SWORN.]

9 THE COURT: The witness is with the defense.

10 BRADY DORSEY, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS

11 DURING DIRECT EXAMINATION BY MS. THOMAS:

12 Q. State your name, please.

13 A. Brady Dorsey.

14 Q. Where do you live, Mr. Dorsey?

15 A. 3132 Graymont Drive.

16 Q. What is your occupation?

17 A. I am the bookkeeper for Dorsey Concrete.

18 Q. And, are you here today at the request of Mr. Rudy Dorsey?

19 A. Yes, ma'am.

20 Q. Is he the owner of Dorsey?

21 A. Yes, ma'am.

22 Q. And, what did Mr. Dorsey request that you bring, pursuant
23 to his subpoena?

24 A. The payroll journal and the documents in which the petty
25 cash vouchers.

1 Q. For what week?

2 A. From May 15th through the 22nd.

3 Q. What year?

4 A. '98.

5 Q. And, do you know Mr. Shawn Massey?

6 A. Yes.

7 Q. Has Mr. Massey been employed by Dorsey Concrete Company?

8 A. Yes.

9 Q. In what capacity is he employed there?

10 A. He was employed as a laborer.

11 Q. What type of work did he do?

12 A. That consisting of grading concrete and placing paper
13 barrier and wire mask.

14 Q. And, about what size is -- what size company is Dorsey
15 Concrete Company?

16 A. It's small; it's a small business.

17 Q. On the average, how many employees does the company employ
18 on a daily basis?

19 A. Well, since it's a sub-contractor, we employ -- it various
20 from five to fifteen.

21 Q. And, where is the company located?

22 A. 3132 Graymont Drive.

23 Q. In the course of being a bookkeeper, for Dorsey Concrete
24 Company, did you come to know Mr. Shawn Massey?

25 A. Well, no. I knew him before that, as a small kid on that

1 block.

2 Q. And, did Shawn Massey work frequently for the company?

3 A. Yes; frequently.

4 Q. And, do your records indicate that Shawn Massey worked
5 there the week of May 15th through May 22, 1998?

6 A. Yes.

7 Q. And, did you bring those records to court with you?

8 A. Yes.

9 MS. THOMAS: May I approach, Your Honor?

10 THE COURT: Yes, ma'am.

11 Q. Mr. Dorsey, I'm going to show you what's been marked as
12 Defendant's Exhibit No. 1. Can you describe this document?

13 A. Yes. This is a weekly payroll journal that's kept on a
14 daily basis as to the employees that we employ. And, it
15 varies from one week to the next, according to the type of
16 job we're doing.

17 This particular one, I think Exhibit No. 1, from
18 the 15th of May '98, through 5/22/98, Shawn Massey had worked
19 16 --

20 MR. COTTRELL: OBJECTION, Your Honor, as to the
21 notations.

22 THE COURT: SUSTAINED, at this point. You need a
23 couple questions.

24 Q. Mr. Dorsey, do you keep this journal in the regular course
25 of your business?

1 A. Yes.

2 Q. And, how long have you been keeping journals for Dorsey
3 Concrete Company?

4 A. Five and-a-half years.

5 Q. And, where are those journals kept?

6 A. In the file cabinet.

7 Q. Now, did you make these notations in the journal?

8 A. Yes. I did.

9 Q. And, has the journal been in your possession?

10 A. Yes.

11 Q. And, are there entries in your journal for the date of May
12 22, 1998?

13 A. Yes.

14 Q. What entries relating to Shawn Massey are in the journal?

15 A. On the Wednesday; Wednesday and Friday; those were the 8
16 hours per day.

17 Q. And, do you know the approximately or exact hours Mr.
18 Massey worked on that Wednesday and on that Friday?

19 A. Yes; eight hours.

20 Q. And, approximately what would those hours have been?

21 A. Seven to say 4 o'clock, something like that. It's
22 according to -- we show up at the job at 7 o'clock.

23 Q. How are employees at Dorsey Concrete Company paid?

24 A. Weekly.

25 Q. And, are they paid in cash or by check?

1 A. Cash.

2 Q. And, what if anything do you do to note that the employees
3 have received their paycheck?

4 A. I write their name, date and the hours worked and the
5 amount per hour, on petty cash voucher, which is to show, you
6 know, to correspond with the ledger.

7 Q. Do you require a signature on those vouchers?

8 A. Yes.

9 Q. And, sometimes do people receive their money without
10 signing?

11 A. Yes. Sometimes they do.

12 Q. And, why is that?

13 A. sometimes they, you know, might be in a hurry or be
14 wanting to get paid, you know. Friday, trying to get away.
15 Sometimes they forget, you know; it's a mental thing.

16 Q. Okay. Now, do you -- do your records indicate that Shawn
17 Massey received payments on Friday, May 22, 1998?

18 A. Yes.

19 Q. And, did you bring those records with you?

20 A. Yes.

21 MS. THOMAS: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, ma'am.

24 Q. Mr. Dorsey, can you describe the documents I just handed
25 to you?

1 A. Yes. This is a petty cash voucher that we use to
2 correspond with our payroll ledger, indicating that we have
3 paid the employees on that Friday.

4 THE COURT: For the record, what number is that?

5 MR. DORSEY: That's Exhibit No. 2.

6 THE COURT: All right. Thank you.

7 Q. And, is there a voucher in there for Shawn Massey?

8 A. Yes, ma'am. It is.

9 Q. How much does it indicate that Shawn Massey was paid on
10 that day?

11 A. For sixteen hours, \$7.50 per hour, \$120.00.

12 Q. Does his signature appear on this voucher?

13 A. Not on this one; no.

14 Q. On the vouchers you have for the week of May 15th through
15 the 22nd, do some signatures appear on the vouchers?

16 A. Yes, ma'am. I have all -- I have all but two. I have all
17 but two, three; sorry.

18 Q. Now, do you have any personal recollection of a project
19 Dorsey Concrete Company was working on during that week?

20 A. Yes, ma'am. We were working on that -- on that Wednesday,
21 we worked with McDevitt and Street Bogess, on Yorkmont Road.
22 And, on that Friday, we were working for Carolina Floors.
23 That was on Eleventh and Graham Street, over off of Dalton
24 Avenue.

25 Q. Was Shawn Massey working at that location?

1 questions.

2 THE COURT: Cross-examination.

3 [CROSS EXAMINATION OF MR. DORSEY, BY MR. COTTRELL:]

4 Q. Okay. Mr. Dorsey, your records, according to your
5 records, you show that Shawn Massey worked for your company
6 on May 22, 1998; correct?

7 A. That's correct.

8 Q. Okay. And, your records -- where in your records does it
9 show, sir, that you picked him up at 7 o'clock?

10 A. That's not shown on the records that I picked him up.

11 Q. Okay. And, Shawn worked two days that week; correct?

12 A. Correct.

13 Q. According to what the records show?

14 A. [Affirmative response.]

15 Q. Did anyone else on that job only work two days?

16 A. No. They vary. I have some that work four days that
17 week, that month -- that week.

18 Q. Isn't it true that everybody else beside Shawn worked four
19 days or did several work --

20 A. No; they varies.

21 Q. From what?

22 A. From 37 -- from 40 hours down to 8 hours.

23 Q. Okay. So, you had quite a few people coming and going
24 then; not everybody was on the job the same day?

25 A. No. That's not what I'm saying.

1 Q. Okay. What are you saying, sir?

2 A. I'm saying there is days when we need more help than
3 others.

4 Q. Right. So, you don't have the same amount of people
5 working on the job everyday?

6 A. That's correct.

7 Q. Okay. Now, according to your testimony, you're sure that
8 you picked up Shawn Massey on 5/22 -- May 22, 1998; correct?

9 A. I transported Shawn; I transported him to the work site on
10 that day, from the location we go from; Graymont Drive.

11 Q. And, where in your records, sir, does it show that you
12 actually transported the help to the work site?

13 A. Well, it's not on the records; we don't keep that on the
14 books.

15 Q. And, what time do you remember picking him up?

16 A. We left the location about 6:40; 6:55, something like
17 that, to get to the work site. The concrete company was
18 scheduled between 7:00 and 7:30, I recollect.

19 Q. You're able to remember that from over a year ago?

20 A. Yeah. We do it every day.

21 Q. All right.

22 A. Usually, that's when concrete is scheduled, early in the
23 morning.

24 Q. Okay. Is it always 7 o'clock or just most of the time 7
25 o'clock?

1. A. What do you mean?

2 Q. Do you always arrive at a work site at 7 o'clock, sir; or,
3 is it just mostly at 7 o'clock?

4 A. Sometimes.

5 Q. Sometimes?

6 A. Sometimes. According to when the concrete can get there.

7 Q. How are you so sure that it was 7 o'clock on May 22nd, if
8 your records don't show, sir?

9 A. Because of the amount of concrete we were pouring that
10 day.

11 Q. And, the records that you have there, does it show how
12 much concrete was poured, sir?

13 A. No; but, I know who we were pouring for; and, I know where
14 it was poured at.

15 MR. COTTRELL: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 Q. Sir, I'm pointing right now to your record book, which is
19 Defendant's Exhibit No. 1; correct?

20 A. Yes, sir.

21 Q. Okay. If I may step around, there is a row of names at
22 the beginning of a ledger. And the name I'm pointing to
23 right now is Shawn Massey; correct?

24 A. That's correct.

25 Q. Okay. And, all of these entries are made in black pen;

1 correct?

2 A. I'm color-blind; if you say so.

3 Q. All right.

4 A. Looks black to me.

5 Q. Are there some swiggles in different colors of ink?

6 A. Yes.

7 Q. Right on Shawn Massey's eight on Friday, May 22nd?

8 A. No. It's not. The only different thing is that red line.

9 Q. You don't see some blue swiggles right there?

10 A. I see swiggles right there; little swiggles right there;
11 little swiggles right there.

12 Q. But, you don't see them where I'm pointing to?

13 A. Yes. I see them right there that you indicate. Just a
14 mark.

15 THE COURT: Slide over a little bit so the jury
16 can see both of you.

17 A. You can see some marks.

18 THE COURT: Mr. Dorsey, if you would please keep
19 your voice up so everybody --

20 MR. DORSEY: Yes.

21 THE COURT: -- can hear you. Thank you.

22 MR. DORSEY: He's indicating a mark; marks three or
23 four places on here.

24 Q. Okay.

25 A. Sometimes we have to change hours being by how many hours

1 they work, below here. You can see others like that.

2 Q. So, sometimes these records are changed; correct?

3 A. No. No. Sometimes the hours are changed.

4 Q. Well, does it look like to you, sir, that Shawn Massey's
5 hours --

6 A. No.

7 Q. -- have been changed --

8 A. No.

9 Q. -- on that day?

10 A. No.

11 Q. There is nothing different about that entry than any of
12 the rest --

13 A. No.

14 Q. -- on that ledger sheet?

15 A. No. Eight-and-eight is sixteen; no matter how you look at
16 it.

17 Q. Okay. And, according to your testimony he was paid for 16
18 hours of work?

19 A. Absolutely.

20 Q. Okay. And, that was at the rate of \$7.50 an hour?

21 A. Absolutely.

22 Q. Okay. And, according to my math, I'm a lawyer, I really
23 don't do math very well, but 16 times \$7.50 is \$120.00;
24 correct?

25 A. [No verbal response.]

1 Q. If he was paid exactly the amount of cash that he got was
2 what --

3 A. Yes.

4 Q. Sixteen times the \$7.50; correct?

5 A. Yes.

6 Q. Okay. And, do you rely on your employees to report income
7 for tax purposes?

8 A. No. Pay their own taxes, usually; because they're exempt;
9 we're sub-contractors.

10 Q. Okay. And sir, according to your testimony, Shawn Massey
11 never had long hair?

12 A. [No verbal response.]

13 Q. What do you consider to be long hair, sir?

14 A. Some that you could call "Afro."

15 Q. Okay. Okay. Has Shawn ever worn very much facial hair,
16 that you're aware of?

17 A. Not aware of any. I haven't seen him with any.

18 Q. Okay. And, it's your testimony that you see Shawn quite a
19 lot; or, at least you used to; correct?

20 A. I used to; yes.

21 Q. All right.

22 MR. COTTRELL: May I approach the witness, Your
23 Honor?

24 THE COURT: All right.

25 Q. Sir, I'm showing you a photograph that's been marked as

1 State's Exhibit No. 7. Take a look at that, please.

2 Do you recognize who the person is in that
3 photograph, sir?

4 A. Yes. I recognize this person.

5 Q. Who is that?

6 A. Shawn Massey.

7 Q. And, how would you describe the length of his hair in
8 that photograph, sir?

9 A. It's moderate, sir. It's moderate. It's not what I would
10 say long hair.

11 Q. Okay. It's longer than his hair is right now?

12 A. Yes. Oh, yes.

13 Q. Does he appear to have some facial hair in that
14 photograph?

15 A. Yes. On here, yes.

16 Q. Okay. Thank you, sir. One further question, you dropped
17 -- it's your testimony that you dropped the defendant off at
18 about 7 o'clock; 6:55?

19 A. Yes.

20 Q. As far as you know.

21 A. Yes.

22 Q. What did you do, after you dropped the defendant and the
23 other people who were working that day, off?

24 A. I returned; went to the office.

25 Q. Okay. Thank you, sir.

1 MR. COTTRELL: No further questions.

2 RE-DIRECT EXAMINATION OF MR. DORSEY, BY MS. THOMAS:

3 Q. Mr. Dorsey, on May -- the week of May 15th to May 22nd, of
4 1998, do you recall seeing Shawn Massey's hair?

5 A. Yes.

6 Q. How was Shawn Massey's hair styled on that -- at that
7 time?

8 A. Like it is now.

9 Q. How would you describe Shawn Massey's hair at this time?

10 A. Short; that's short; shorter than that.

11 Q. Is this hair long enough to braid?

12 A. No.

13 Q. Is it long enough to comb?

14 A. No.

15 Q. Have you ever seen Shawn Massey's hair longer than this?

16 A. I haven't.

17 Q. Do you know when this photograph was taken?

18 A. This?

19 Q. Yes.

20 A. No. I don't know.

21 THE COURT: Is that the photograph that's referred
22 to by the state as State's Exhibit No. 7?

23 MS. THOMAS: Yes, sir.

24 THE COURT: Okay. Thank you.

25 Q. And, in that photograph, in your opinion, is that hair

1 long enough to braid?

2 A. No.

3 Q. Thank you, Mr. Dorsey.

4 MS. THOMAS: No further questions.

5 THE COURT: Any re-cross examination?

6 MR. COTTRELL: Nothing further, Your Honor.

7 THE COURT: All right. Thank you, sir. You can
8 step down. The defense can call it's next witness.

9 MS. THOMAS: I would call Ms. Annie Massey.

10 THE COURT: All right. Come around please, Ms.
11 Massey.

12 [WITNESS SWORN.]

13 ANNIE MAY MASSEY, BEING FIRST DULY SWORN, TESTIFIES AS
14 FOLLOWS DURING DIRECT EXAMINATION BY MS. THOMAS:

15 THE COURT: Ms. Thomas, did you wish to have Mr.
16 Dorsey released?

17 MS. THOMAS: Yes; we do, Your Honor.

18 THE COURT: Does the state have further need for
19 Mr. Massey?

20 MR. COTTRELL: No, Your Honor.

21 THE COURT: Mr. Dorsey is free to go, if he needs
22 to go; but, the records, I think are still part of the case.
23 So, the records would be with the state. Mr. Dorsey can
24 leave though.

25 The witness is with the defense.

1 Q. State your name, please ma'am.

2 A. Annie May Massey.

3 Q. How do you know Shawn Massey?

4 A. He's my grandson.

5 Q. How many years have you known him?

6 A. All of his life.

7 Q. And, how old is he?

8 A. Twenty-seven.

9 Q. And, has Shawn Massey stayed with you frequently or lived
10 with you?

11 A. Yes, ma'am.

12 Q. Was he living with you during the month of May, 1998?

13 A. Yes, ma'am.

14 Q. And, do you recall him working during that month?

15 A. Yes, ma'am.

16 Q. And, where do you recall Shawn working?

17 A. For Mr. Dorsey.

18 Q. And, what time would Shawn go to work?

19 A. Around seven.

20 Q. And, when he worked, is that the time he would always go
21 in?

22 A. Yes, ma'am; as far as I can relate.

23 Q. And, what time would Shawn usually finish work?

24 A. Late in the evening.

25 Q. And, did Shawn own a car at that time?

1 A. No, ma'am.

2 Q. How did Shawn get to and from work?

3 A. Mr. Dorsey would pick him up.

4 Q. Now, was Mr. Brady Dorsey always the one who picked him
5 up or were there other employees or --

6 A. Mr. Dorsey.

7 Q. Okay. Now, have you ever seen your grandson with long
8 hair?

9 A. No, ma'am.

10 Q. How would you describe your grandson's hair at this point?

11 A. Now?

12 Q. Yes.

13 A. Short.

14 Q. Would you say that his hair is long enough to comb?

15 A. No, ma'am.

16 Q. Is his hair long enough to braid?

17 A. No, ma'am.

18 Q. And, do you have any recollection of Shawn ever having had
19 longer hair?

20 A. No, ma'am.

21 Q. Was his hair styled this way in May of 1998?

22 A. Yes. It was.

23 Q. Has Shawn gained -- I'm sorry. Has Shawn lost a lot of
24 weight since that time?

25 A. No, ma'am.

1 Q. Does his weight appear to be the same?

2 A. Yes, ma'am. He always been thin.

3 Q. Have you ever seen Shawn wear red clothing?

4 A. No, ma'am.

5 Q. Have you ever known Shawn to own or possess or carry a
6 weapon?

7 A. No, ma'am.

8 Q. Have you ever known Shawn to wear hats?

9 A. A hat?

10 Q. [Affirmative response.]

11 A. Yes. A cap.

12 Q. Okay. Now, did you bring some photographs of Shawn with
13 you today?

14 A. Yes. I did.

15 MS. THOMAS: May I approach Ms. Massey, Your Honor?

16 THE COURT: Yes, ma'am.

17 MR. COTTRELL: Your Honor, the state WILL OBJECT to
18 these exhibits, on the grounds of relevance. These are
19 Defendant's Exhibit Nos. 3, 4, 5.

20 THE COURT: Okay. OBJECTION NOTED. I'll rule on
21 the objections when and if they're identified.

22 Q. Calling your attention first to the photograph marked
23 Defendant's Exhibit No. 3. Can you describe that photograph?

24 A. Yes. This is Shawn when he was at Kennedy, playing
25 basketball.

1 Q. Is that junior high school?

2 A. Yes, ma'am.

3 Q. And, how is Shawn's hair styled on the photograph?

4 A. Low cut.

5 MR. COTTRELL: OBJECTION.

6 THE COURT: OVERRULED.

7 A. Well, you can see it.

8 Q. And, what --

9 THE COURT: Don't hold it up yet, ma'am. It's not
10 introduced into evidence. She was asking about his hair. You
11 can answer that question.

12 A. It's cut low.

13 Q. Compared to the way Shawn's hair is today, how would you
14 compare that?

15 A. Cut low.

16 Q. Would you say it's absolutely identical?

17 A. Yes, ma'am.

18 Q. Have you known Shawn to have any difficulty getting his
19 hair long or growing his hair?

20 A. No. He just don't never grow his hair out.

21 Q. Okay. And, you've never seen him with braids?

22 A. No, ma'am.

23 Q. Calling your attention to Exhibit No. 4, what does that
24 photograph show?

25 A. The night of his prom.

1 Q. And, would he have been in high school, at that time?

2 A. Yes, ma'am.

3 Q. How was Shawn's hair styled?

4 A. It's low; cut low.

5 Q. Would you describe it as being the identical cut that he
6 has today?

7 A. Yes, ma'am. It is.

8 Q. Calling your attention to Exhibit No. 5, what does that
9 photograph depict?

10 A. This is one that he made for me; and, this is of Shawn and
11 his girlfriend and his baby.

12 Q. And, approximately how long ago was that made?

13 A. It was in '90.

14 Q. And, is Shawn's hair style in that photograph identical to
15 the way it is right now?

16 A. Identical.

17 Q. Have you ever known Shawn with hair long enough to pull
18 back from his face?

19 A. No, ma'am.

20 Q. Thank you, Ms. Massey.

21 MS. THOMAS: No further questions.

22 THE COURT: Cross-examination.

23 [CROSS EXAMINATION OF MS. MASSEY, BY MR. COTTRELL:]

24 Q. Ms. Massey, it's your testimony you've never known your
25 son to wear red?

1 A. No. Never known him to wear red.

2 Q. All right. Ma'am, was Shawn's hair cut like it was say,
3 in March of 1998?

4 A. Yes. He always wore low cut hair.

5 Q. Was it cut that way approximately March of 1997?

6 A. Yes.

7 Q. Okay.

8 A. As you can see.

9 Q. Well, that picture you're holding up, ma'am, that was
10 actually taken when he was in junior high school; wasn't it?

11 A. [Affirmative response.] But, as you can see, this is the
12 same thing.

13 Q. And, that's a high school photograph; isn't it?

14 A. Yes. But, this right here was in '90.

15 THE COURT: Okay. Just a minute. If we're going
16 to be displaying pictures and holding them up, does the
17 defense wish to offer the photographs?

18 MS. MASSEY: I'm sorry.

19 THE COURT: That's okay. Does the defense wish to
20 offer these exhibits, Exhibit Nos. 3, 4 and 5, if we're
21 going to be showing them around, I think they will need to be
22 ruled on whether they're admissible or not.

23 MS. THOMAS: Yes. We do wish to offer them.

24 THE COURT: I realize we're doing this a little
25 bit out of order. But, I think it's a necessity to make a

1 ruling on its admissibility. I believe the state objects to
2 their admissibility. Do you wish to question her about the
3 photographs and not object to their admissibility?

4 MR. COTTRELL: I would still object to them, Your
5 Honor.

6 THE COURT: All right. I'm going to ALLOW them as
7 being admissible, under 404-A(1) and as being offered for the
8 purpose of showing a personal trait of the accused and
9 determine that under 403 that they are relevant and let them
10 be admitted and will admit them, Defendant's Exhibit Nos. 3,
11 4 and 5.

12 You may go-ahead now and have any questioning.
13 Now, people may refer to the photographs, as they feel
14 necessary.

15 MR. COTTRELL: Thank you, Your Honor.

16 Q. Ms. Massey, how old is your son now?

17 A. Twenty-seven.

18 Q. He's 27. And, he was born on March 23, 1973; correct?

19 A. Oh, Lord; I can't -- I was there when he was born; but, I
20 can't tell you; I can't remember. I can't even remember some
21 of my own children.

22 Q. Would you agree that that's around the time he was born?

23 A. It was around the time; because, he's 27.

24 Q. Okay. Now, that first picture is of Shawn in the junior
25 high basketball uniform, that was taken in junior high

1 school; right?

2 A. [Affirmative response.]

3 Q. Right. And, the next one, the prom picture, that was
4 taken in high school; high school prom?

5 A. [Affirmative response.]

6 Q. Okay. And, I believe you testified that Shawn's
7 girlfriend and baby was in '90?

8 A. No. It was in '90; I didn't say in '90-what; but, I know
9 it was in the '90's because his mother died in '94. So, it
10 was after his mother died.

11 Q. It was after 1994?

12 A. [Affirmative response.]

13 Q. But, to return to my earlier line of questioning, ma'am,
14 you don't know how Shawn's hair looked say in March of 1995?

15 A. [Affirmative response.]

16 Q. Okay. How did it look then?

17 A. He wore a low haircut.

18 Q. Okay. Is it like it is now?

19 A. [Affirmative response.]

20 MR. COTTRELL: May I approach the witness, Your
21 Honor?

22 THE COURT: Yes, sir.

23 Q. Ma'am, I'm going to ask you to look at this photo, which
24 is State's Exhibit No. 7.

25 A. [Affirmative response.]

1 Q. Do you know the young man in that photograph?

2 A. Shawn Massey.

3 Q. What's his hair look like there, to you, in that picture?

4 A. It's longer than it is now.

5 Q. Is that a close-cut to you?

6 A. No. It looks like he needs a haircut.

7 Q. Okay. Would it surprise you, ma'am, to learn that picture
8 was taken in March of 1995?

9 A. Well, it had to be when he was in jail; because, my
10 husband was real sick and I didn't get a chance to see him
11 every day.

12 But, before this picture was taken, in '95, he did
13 have a low haircut. I do remember that.

14 Q. Okay. Did you ever remember having him -- him having a
15 lot of facial hair?

16 A. No.

17 Q. Okay.

18 A. I've never seen Shawn with a beard.

19 Q. Well, let me show you another photograph, ma'am. This is
20 State's Exhibit No. 8.

21 MR. COTTRELL: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes, sir.

24 Q. Ma'am, I'm showing you a copy of the photo line-up in this
25 case. I direct your attention to the picture, the upper-

1 right-hand corner.

2 A. [Affirmative response.]

3 THE COURT: Just for clarity, that is State's
4 Exhibit No. 8?

5 MR. COTTRELL: That's correct, Your Honor.

6 THE COURT: I think that was introduced as an
7 original. Is that the original or is that a copy?

8 MR. COTTRELL: That's the original.

9 THE COURT: Okay. Go-ahead.

10 Q. Ma'am. I'll direct your attention to the picture, in the
11 upper-right-hand corner of that line-up.

12 A. Yes.

13 Q. Do you recognize the young man in that picture?

14 A. Yes. Shawn Massey.

15 Q. Okay. And, doesn't it appear in that line-up that he's
16 got some hair down around under his chin?

17 A. Yeah. Look like he needs to shave.

18 Q. Okay. Does he also look like he's got a mustache?

19 A. Yes. He look like he got a mustache.

20 Q. Do you recall ever seeing him with hair like that?

21 A. [Negative response.]

22 Q. How tall is Shawn Massey?

23 A. About five -- I'm about six, I believe. I don't know
24 exactly; but, I think he about my height.

25 Q. So, do you think he's six-feet tall?

1 A. He's five-feet, eleven or six feet.

2 Q. So, would it surprise you that on March 16th of 1995 he's
3 actually listed as five-eight?

4 A. It sure would surprise me; because, we all tall.

5 Q. Okay.

6 A. Just about all of us.

7 Q. Thank you, ma'am.

8 MR. COTTRELL: No further questions.

9 THE COURT: Any re-direct?

10 MS. THOMAS: Yes.

11 RE-DIRECT EXAMINATION OF MS. MASSEY, BY MS. THOMAS:

12 Q. Ms. Massey, how many grandchildren do you have?

13 A. I have 14 grandchildren and 14 great-grands.

14 Q. So, 14 grandchildren and 14 great-grandchildren. And, you
15 raised some of these children; did you not?

16 A. Yes, ma'am.

17 Q. How many of these children and grandchildren and great-
18 grandchildren did you raise?

19 A. I raised Shawn, Roberta, Billy and Tony.

20 Q. And, you don't know all of your grandchildren and great-
21 grandchildren's birthdays, by heart; do you?

22 A. No, ma'am.

23 Q. The photograph shown to you by Mr. Cottrell, you don't
24 know when that photograph was taken; do you?

25 A. No, ma'am. I don't.

1 Q. Did you say it appears he was in jail, at that time?

2 A. He must have been.

3 Q. And, he just needed a haircut?

4 A. He needed a haircut.

5 Q. But, you've never known Shawn to intentionally when he had
6 gown his hair even that long; have you?

7 A. No, ma'am.

8 MS. THOMAS: Thank you, Ms. Massey.

9 THE COURT: Any re-cross?

10 MR. COTTRELL: No, Your Honor.

11 THE COURT: Ma'am, you can step down. The defense
12 may call it's next witness.

13 MS. THOMAS: Call Mr. Bobby Ross.

14 THE COURT: Come around please, Mr. Ross.

15 [WITNESS SWORN.]

16 BOBBY ROSS, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS

17 DURING DIRECT EXAMINATION BY MS. THOMAS:

18 THE COURT: The witness is with the defendant.

19 Q. State your name.

20 A. Bobby Ross.

21 Q. Do you know Shawn Massey?

22 A. Yes. I do.

23 Q. How do you know Shawn Massey?

24 A. Through a friend.

25 Q. How well do you know Shawn Massey?

1 A. Pretty well.

2 Q. And, how long have you known him?

3 A. About three years.

4 Q. Did you know Shawn Massey during the month of May, 1998?

5 A. Yes.

6 Q. And, how would you describe Shawn Massey's hair during
7 that time period?

8 A. Short.

9 Q. How would you describe Shawn Massey's hair at this time?

10 A. Short.

11 Q. How would you compare Shawn Massey's hair during that time
12 period and at this time?

13 A. Short.

14 Q. Would you say it's the same or different?

15 A. The same; probably shorter then. It was shorter than what
16 it is now.

17 Q. During May of '98, did you ever see Shawn Massey with hair
18 long enough to put in braids?

19 A. Never.

20 Q. Did you see him with braids that were braided into his
21 hair and then long in the back?

22 A. Never.

23 Q. Did you ever see Shawn Massey's hair long enough to comb?

24 A. No.

25 Q. Did you know Shawn Massey in April of '98?

1 A. Yes.

2 Q. In March of '98?

3 A. Yes.

4 Q. In February of '98?

5 A. Yes.

6 Q. And, was his hair ever any different than it is now?

7 A. No.

8 Q. Did Shawn look the same, as far as being heavier or
9 thinner, in May of '98?

10 A. He's always been thin.

11 Q. You've never known him to weigh any more than he weighs
12 now?

13 A. No.

14 Q. Have you ever known Shawn Massey to possess, own or carry
15 a gun or weapon of any kind?

16 A. No.

17 Q. Do you feel that you're a close friend of Shawn Massey?

18 A. Yes.

19 MS. THOMAS: Thank you, Mr. Ross.

20 THE COURT: Cross examination.

21 [CROSS EXAMINATION OF MR. ROSS, BY MR. COTTRELL:]

22 Q. About how much time, sir, on an average, would you
23 estimate you spend with Shawn Massey, say in the course of a
24 month? How many times did the two of you get together?

25 A. I would say two, three times; maybe, within a month.

1 Q. And, you never have known him to have any kind of long
2 hair, at all?

3 A. Never.

4 Q. Did you know him in 1995?

5 A. No.

6 Q. You did not know him then?

7 A. In '90? I've only known him about three years.

8 Q. Okay. So, that dates back to 1996; correct?

9 A. Right.

10 Q. Have you ever known Mr. Massey to wear the kind of
11 artificial braids that you can attach to the back of the
12 head?

13 A. No. And, he wouldn't be able to because his hair has
14 never been long enough. You have to have hair long enough in
15 order to attach those braids.

16 Q. But, you are familiar with that practice?

17 A. Yes.

18 MR. COTTRELL: Nothing further.

19 THE COURT: Re-direct?

20 MS. THOMAS: Yes.

21 RE-DIRECT EXAMINATION OF MR. ROSS, BY MS. THOMAS:

22 Q. Mr. Ross, you were present yesterday during the testimony
23 of Ms. Wood. Is that correct?

24 A. That is.

25 Q. And, how did you hear her describe the hair?

1 MR. COTTRELL: OBJECTION.

2 THE COURT: SUSTAINED as to what he might have
3 heard another witness to say.

4 MS. THOMAS: No further questions.

5 THE COURT: Any re-cross?

6 MR. COTTRELL: None, Your Honor.

7 THE COURT: Okay. Thank you, sir. You can stand
8 down. The defense may call its next witness.

9 MS. THOMAS: Next we'll call Reverend Linda Brown.

10 [WITNESS SWORN.]

11 REVEREND LINDA BROWN, BEING FIRST DULY SWORN, TESTIFIES AS

12 FOLLOWS DURING DIRECT EXAMINATION BY MS. THOMAS:

13 THE COURT: The witness is with the defense.

14 Q. State your name, please?

15 A. Linda Brown.

16 Q. And, how are you employed?

17 A. I'm a Minister.

18 Q. And, what church are you a Minister of?

19 A. Greenville Memorial A.M.E. Zion Church, here in Charlotte.

20 Q. How long have you been employed as a minister at

21 Greenville Memorial A.M.E. Zion Church?

22 A. Eight years in all.

23 Q. Do you know Shawn Massey?

24 A. Yes. I do.

25 Q. How do you know Shawn Massey?

1 A. Well, I was at his Christening. I am his Godmother.

2 Q. Do you see Shawn Massey frequently?

3 A. Yes. I do

4 Q. Did you see Shawn Massey, frequently, during the early
5 part of 1998?

6 A. '98; I'm sure I did.

7 Q. Did you see Shawn on a regular basis?

8 A. Well, as often as I can. We were traveling a lot; but, if
9 I'm not seeing him, I'm talking. He calls; he calls every
10 time he can get a chance; at night; late at night; in the
11 mornings. All the time, letting me know that he's okay.

12 Q. Have you had the opportunity to observe Shawn's hair?

13 A. Oh yes. I always observed him because of the way his
14 head is shaped. And, I remember always observed it, for that
15 reason.

16 Q. And, how have you observed his hair to be?

17 A. Always short. Like that; because of the way his head is
18 shaped. And, he was like that when he was a baby.

19 Q. Have you ever known him to have hair any longer than this?

20 A. No, no, no.

21 Q. Have you ever known Shawn to have braids?

22 A. No, no, no.

23 Q. Have you ever known Shawn to have hair long enough to
24 braid?

25 A. No; not at all.

1 Q. And, is it true that every time you've ever seen Shawn,
2 he's had hair like that?

3 A. Shorter than that; shorter than that; because he would
4 have little waves in it; shorter than that.

5 Q. Thank you Reverend Brown.

6 A. You're welcome.

7 THE COURT: Cross examination?

8 MR. COTTRELL: No, Your Honor.

9 THE COURT: Thank you, ma'am, you can step down.

10 REVEREND BROWN: Okay.

11 THE COURT: Let's go-ahead and call the next
12 witness?

13 MS. THOMAS: Call Ms. Roberta Massey.

14 [WITNESS SWORN.]

15 ROBERTA MASSEY, BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS

16 DURING DIRECT EXAMINATION BY MS. THOMAS:

17 THE COURT: The witness will be with the
18 defendant.

19 Q. State your name?

20 A. Roberta Massey.

21 Q. Ms. Massey, how do you know Shawn Massey?

22 A. My brother.

23 Q. How long have you known him?

24 A. all my life.

25 Q. And, have you been close to Shawn Massey, all --

1 A. Yes.

2 Q. -- of his life?

3 A. Yes.

4 Q. And, you -- have you seen the photographs that your
5 grandmother, Annie Massey, brought to court?

6 A. Yes, ma'am.

7 Q. Is that the way Shawn has always worn his hair?

8 A. Yes, ma'am.

9 Q. Have you ever known Shawn to wear braids?

10 A. No, ma'am.

11 Q. And, who generally cut Shawn's hair?

12 A. Me.

13 Q. And, how does he like his hair cut?

14 A. Bald; real short.

15 Q. Has he ever shown any interest in growing his hair long?

16 A. No.

17 Q. Did you see the photograph offered by Mr. Cottrell,
18 earlier?

19 A. Yes.

20 Q. And, do you have an observation about that photograph?

21 A. I have a problem with that photograph.

22 Q. What -- where do you believe the photograph was taken?

23 A. When he was in -- when he was incarcerated; he was
24 downtown for a while and they shipped him to Spector. And,
25 that's when they took that picture; when they shipped him to

1 Spector Drive.

2 Q. And, --

3 THE COURT: For the record, again, the photograph
4 you're referring to is -- has been identified as State's
5 Exhibit No. 7. Is that correct?

6 A. Yes.

7 Q. And, is it your opinion he was incarcerated when that was
8 taken?

9 A. [Affirmative response.]

10 Q. And, could not get to a barber?

11 A. I don't think they have barbers downtown there. I'm not
12 for sure.

13 Q. Okay. And, have you ever known Shawn to grow his hair,
14 even that length, intentionally?

15 A. No. He never had hair growing in.

16 Q. In your opinion, is the hair in that photograph long
17 enough to braid?

18 A. No.

19 Q. Is that -- is the hair in that photograph long enough to
20 braid closely to the head?

21 A. No. I have girls. I know.

22 Q. Thank you.

23 MS. THOMAS: No further questions.

24 THE COURT: Cross examination.

25 MR. COTTRELL: Thank you, Your Honor.

1 [CROSS EXAMINATION OF MS. MASSEY, BY MR. COTTRELL:]

2 Q. Ma'am, how do you know, of any personal knowledge,
3 whatsoever, when State's Exhibit No. 7 was taken?

4 A. Because I know someone that works for the Sheriff's
5 Department.

6 Q. And, have you talked with them about that specific
7 picture, as to when it was taken?

8 A. I talked to her; I talked to this person, on occasions;
9 and, she, the pictures that y'all had, I know, on his little
10 badge, when he was with this picture, they have a picture;
11 they have their face on their badge.

12 Q. Are you sure that's the same photograph that was on his
13 little badge?

14 A. This is not the photograph.

15 Q. There was another photograph on the badge?

16 A. It was like two things. It was like taken one when he was
17 at the Mecklenburg County Jailhouse. And then, that was when
18 he was at Spector.

19 Q. The truth is, ma'am, you have no idea exactly when that
20 picture was taken?

21 A. It was taken when he was locked up; I know. When you was
22 physically shipped.

23 Q. Do you know the exact date that --

24 A. No.

25 Q. -- particular mug shot was taken?

1 A. Not the exact date. But, I can find out for you.

2 MR. COTTRELL: No further questions.

3 THE COURT: Any re-direct?

4 MS. THOMAS: [No verbal response.]

5 THE COURT: Thank you, ma'am. Step down. We'll
6 stop for lunch, at this point. Members of the jury, we're
7 going to take our luncheon recess. We'll take our normal
8 luncheon recess hours and I'll ask you to return at 2:00.

9 Members of the jury, beware of the weather; don't
10 be blown away. Looks like it's blowing out there pretty
11 much.

12 So, remember the instructions that I've given you
13 about not discussing the case among yourselves or discussing
14 it with anyone else. Don't allow anyone to discuss it with
15 you or in your presence.

16 Keep your minds open. Don't form any opinions.
17 Don't have any contact at all with anyone who has any
18 involvement in this case.

19 Don't read or watch or listen to any accounts of
20 this hearing.

21 Members of the jury, please be back in place at 2
22 o'clock, while following the directions of the bailiff.

23 We'll resume at 2:00. You may leave the courtroom now.

24 Thank you.

25 {The following proceedings take place in open court, outside

1 the presence of the jury.}

2 THE COURT: Is there anything for the state,
3 before we break for lunch?

4 MR. COTTRELL: No, Your Honor.

5 THE COURT: Anything from the defense?

6 MS. THOMAS: No, Your Honor.

7 THE COURT: All right. We'll recess for lunch
8 until 2 o'clock.

9 {Court stands in recess.}

10 {Court reconvenes.}

11 THE COURT: All right. The Court will note all of
12 our parties are present. Anything from the state before the
13 jury is brought back in?

14 MR. COTTRELL: No, Your Honor; nothing from the
15 state.

16 THE COURT: Anything from the defendant, before
17 the jury is brought back in?

18 MS. THOMAS: No, Your Honor.

19 THE COURT: Okay. Out of curiosity, to help us
20 with planning the time remaining today, can the defense give
21 me some idea of how many additional witnesses there are?

22 MS. THOMAS: Your Honor, I have one additional
23 witness who should be here any moment. Just one more
24 witness.

25 THE COURT: All right. We would be waiting on

1 that witness then.

2 MS. THOMAS: If we could just wait a few minutes.

3 THE COURT: I would rather do that and bring the
4 jury in and let us all sit here and look at ourselves.

5 I can put on the record that there was a brief
6 conference at the bench, at the conclusion of the state's
7 evidence, at which time, and please correct me if I'm stating
8 anything different from your recollection, Ms. Thomas, at the
9 bench.

10 Ms. Thomas indicated that they did make motions and
11 wished the record to reflect that they made motions to
12 dismiss, at the close of the state's evidence, of all
13 charges. Did not wish to argue the motions out of the
14 presence of the jury.

15 The Court, therefore, DENIED THE Motion to Dismiss,
16 at the close of the state's evidence.

17 Is that your recollection, Ms. Thomas?

18 A. That is my recollection.

19 THE COURT: Okay. Mr. Cottrell?

20 MR. COTTRELL: That is correct, Your Honor.

21 THE COURT: All right.

22 DEPUTY SHERIFF: May I approach, Your Honor?

23 THE COURT: Yes.

24 {Conference at sidebar, outside the hearing of the jury,
25 without the attorneys present.}

1 THE COURT: One other thing that needs to be
2 placed on the record. At the -- just as we broke for lunch,
3 one of the jurors started to approach me and wished to speak
4 about some item. I believe it was Juror No. 8, Mr. Williams;
5 front row; second from the end.

6 Sheriff, is that the juror that you remember?

7 DEPUTY SHERIFF: That sounds right, Your Honor.

8 THE COURT: I can confirm that. But, in any way,
9 it was a juror who wished to just advise me. I referred it
10 to the bailiff. I did speak to the bailiff and the bailiff
11 will bring it to me.

12 The juror did speak to me and then to the bailiff.
13 The bailiff advises me that that jury indicated that he
14 recognized Reverend Linda Brown as someone he had thought he
15 had gone to school with. Is that correct, sheriff?

16 DEPUTY SHERIFF: That's correct, Your Honor

17 THE COURT: Nothing more than that; but, that he
18 felt it necessary to bring it to my attention. I'll make
19 inquiry. If either party wishes to make some inquiry about
20 the matter, apparently, as I understand it, just this juror
21 recognized this individual as someone he had known sometime
22 ago in school.

23 MR. COTTRELL: Does the state wish further inquiry
24 be made?

25 MR. COTTRELL: No, Your Honor.

1 THE COURT: Does the defense wish for an inquiry
2 to be made?

3 MS. THOMAS: No, Your Honor.

4 THE COURT: And, to be sure that I'm not leaving
5 out anything, did he say anything else, Sheriff, concerning
6 his knowledge of that witness or anything else?

7 DEPUTY SHERIFF: That was all, Your Honor.

8 THE COURT: That was it.

9 MR. COTTRELL: Which one was that; Linda Brown?

10 THE COURT: Linda Brown; Reverend Linda Brown.

11 MR. COTTRELL: And, since we do have some time, I
12 would like the Court to make an inquiry of Mr. Williams.

13 THE COURT: All right. That's fine. Well
14 Sheriff, go-ahead and ask that juror, I believe it was Mr.
15 Williams. You'll recognize the juror when you see him, will
16 you not?

17 DEPUTY SHERIFF: Yes, Your Honor.

18 THE COURT: Okay. Ask that juror to step in the
19 courtroom.

20 {Thereupon, the following proceedings take place in open
21 court, in the presence of Juror, Mr. Williams.}

22 THE COURT: Okay. Mr. Williams, thank you for
23 coming in the courtroom. Sir, I have been advised that as we
24 began our luncheon recess, you felt it necessary to go to the
25 bailiff and bring the bailiff's attention to something.

1 I'll ask you to go-ahead and relay that to us, if
2 you would please.

3 MR. WILLIAMS: Just that I knew -- know one of the
4 witnesses in the case.

5 THE COURT: Who was it that you know, sir?

6 MR. WILLIAMS: A schoolmate of mine, Linda; I can't
7 recall her last name; but, I know --

8 THE COURT: Linda Brown?

9 MR. WILLIAMS: Yes.

10 THE COURT: Ms. Brown, would you stand just a
11 moment, please. Is that the individual, sir?

12 MR. WILLIAMS: Yes; it is.

13 THE COURT: All right. And, -- you can be seated.

14 And, how is it that you know Ms. Brown, sir; or,
15 Reverend Brown?

16 MR. WILLIAMS: We was in school together; high
17 school together.

18 THE COURT: Okay. I'm making no comment about
19 your age; that was more than a year or two ago, I take it.
20 Is that correct?

21 MR. WILLIAMS: Yes.

22 THE COURT: About how long ago was that, sir?

23 MR. WILLIAMS: Pretty close -- I've been out of
24 high school 39 years; so, it's around 40 years.

25 THE COURT: All right. Mr. Williams, have you had

1 any close contact with Reverend Brown since that high school?

2 MR. WILLIAMS: No; I haven't.

3 THE COURT: All right. Have you even seen
4 Reverend Brown to any degree, since you all were in school
5 together?

6 MR. WILLIAMS: I can't recall. I may have, 40
7 years ago.

8 THE COURT: Recently?

9 MR. WILLIAMS: No, no, no.

10 THE COURT: No close relationship.

11 MR. WILLIAMS: No.

12 THE COURT: Nothing like visiting in each others
13 homes or frequent communications or anything like that. Is
14 that correct?

15 MR. WILLIAMS: No.

16 THE COURT: All right. Sir, does the fact that
17 she's appeared as a witness for the defense, influence your
18 decision in this case, in any way?

19 MR. WILLIAMS: No; it wouldn't.

20 THE COURT: All right. Sir, does it make any
21 difference at all, sir, that you knew a witness who has
22 testified for one side or the other, some 39 years ago or so,
23 would hinder your ability to serve impartially to the state
24 and to the defense, as a juror?

25 MR. WILLIAMS: No.

1 THE COURT: Does it make any difference at all to
2 you, sir?

3 MR. WILLIAMS: No, it doesn't make any difference.

4 THE COURT: All right. As I understand it then,
5 Mr. Williams, you, after seeing the witness, recognized her
6 as someone that you went to high school with, some 39 years
7 ago; you've had no real contact with her at all, since that
8 period of time. That it really does not affect you in any
9 way as a juror; but, you felt it your duty as a juror to
10 bring it to our attention. Is that correct?

11 MR. WILLIAMS: Yes. I didn't want to -- for
12 something to come up later saying that, you know.

13 THE COURT: All right. And, you acted entirely
14 proper. So Mr. Williams, is there anything else that you
15 need to tell us about that?

16 MR. WILLIAMS: No; that's it. I recognized her as
17 -- when she took the stand; and, I just thought it was my
18 duty to report that or let someone know.

19 THE COURT: Yes. Thank you very much, sir. If
20 you'll just sit there for just a moment. Counsel approach
21 the bench, please.

22 {Conference at sidebar, outside the hearing of the juror,
23 with all attorneys present.}

24 {Thereupon, the following proceedings take place in open
25 court, within the hearing of the juror.}

1 THE COURT: Mr. Williams, if you would, just let
2 the prosecutor ask you some questions. We appreciate it very
3 much.

4 VOIR DIRE EXAMINATION OF MR. WILLIAMS, BY MR. COTTRELL:

5 Q. Mr. Williams, thank you for bring it to our attention.

6 Were you and Ms. Brown friends in high school?

7 A. We were just friends. I knew her.

8 Q. Okay.

9 A. She knew me.

10 Q. But, you all never went out on dates or anything like
11 that?

12 A. No. If I could remember, she dated another fellow who
13 played football.

14 Q. All right. Sir, because of the fact that you know Ms.
15 Brown and you were acquainted with her, in high school, do
16 you think that you might be more inclined to believe she's
17 telling the truth than say any other witness that got up on
18 the stand?

19 A. No. I would just keep that neutral, you know.

20 Q. All right. Thank you, sir.

21 THE COURT: State wish to ask any further
22 questions?

23 MR. COTTRELL: No, Your Honor.

24 THE COURT: Does the defense wish to ask the
25 juror any questions?

1 MS. THOMAS: No, Your Honor.

2 THE COURT: All right. Mr. Williams, you can
3 return to the jury room. Again sir, appreciate your bringing
4 this to our attention. If you will, just don't discuss it
5 among the other jurors. And, you did entirely the right
6 thing. Thank you very much, Mr. Williams.

7 THE COURT: All right.

8 {The following proceedings take place in open court, outside
9 the presence of the jury.}

10 THE COURT: All right. State wish to be heard
11 concerning Juror No. 8, Mr. Williams?

12 MR. COTTRELL: Yes, Your Honor. I mean, I believe
13 Mr. Williams is being completely honest with the Court. And,
14 the state appreciates his candor.

15 However, since the -- since the witness -- since
16 the juror does know a witness, in this case, who has
17 identified herself as the Godmother of the defendant and has
18 given testimony as to the defendant's appearance, out of an
19 abundance of caution, the state would make a motion to
20 dismiss Mr. Williams from the jury panel.

21 THE COURT: All right. Thank you, sir. Defense
22 wish to be heard?

23 MS. THOMAS: Yes, Your Honor. We strongly object
24 to the dismissal of Mr. Williams. He's obviously a very
25 truthful person to bring this to our attention. He stated

1 that he knew her 40 years ago. He has had no contact with
2 her since then. And, at that time they have no relationship,
3 other than knowing each other.

4 We have a storm on the way; we may need our
5 alternate juror for something more serious.

6 We do oppose the dismissal of Mr. Williams.

7 THE COURT: All right. For the record, the
8 Court will note that the juror, Juror No. 8, Mr. Tommy
9 Williams, did attempt to relay a message to the Court, during
10 the beginning of the luncheon recess. The Court felt it not
11 appropriate to discuss any matter with the juror; referred
12 the juror to the bailiff.

13 I had earlier instructed jurors if they have some
14 matter that they should go to the bailiff.

15 The bailiff then advised me that Juror No. 8, Mr.
16 Williams, felt like that he recognized and knew one of the
17 witnesses who had testified.

18 The Court advised the bailiff I would bring that to
19 counsel's attention. The Court does appreciate the bailiff
20 reminding me of that.

21 The Court would further direct the record to
22 reflect that the parties first indicated they did not wish
23 any further inquiry made; but, the state, upon reflection,
24 then asked Juror No. 8, Mr. Williams, be brought into the
25 courtroom for inquiry to be made. The Court determined that

1 inquiry should be made by bringing the juror into the
2 courtroom.

3 The juror was brought in the courtroom; the juror
4 did indicate that he did in fact recognize a witness who
5 testified for the defense, Reverend Linda Brown, that he had
6 going to high school with her, as he recalled, some 39 years
7 ago.

8 That he had not had contact with Ms. Brown since
9 their high school days; that his relationship with Ms. Brown
10 was not that of a social relationship of dating or that sort
11 of thing; but, that he did remember her as a friend of his,
12 although nothing to indicate in the juror's testimony that
13 they were close friends, having dated or that sort of thing.

14 The juror was thanked for bringing the matter to
15 the Court's attention and instructed not to discuss it with
16 other jurors and returned to the jury room.

17 Upon inquiry by the Court, the state has moved this
18 juror be dismissed, due to his knowledge of a witness who has
19 testified for the defense.

20 The defense has indicated their opposition to the
21 juror being dismissed.

22 The Court will conclude that nothing Mr. Williams,
23 Juror No. 8, said would interfere with his ability to serve
24 as a fair and impartial juror.

25 That Mr. Williams' knowledge of the juror and the

1 passage of almost four decades is sufficient time period,
2 even should they know each other in the manner in which he
3 referred, during this time period, would not call for Mr.
4 Williams' dismissal, unless the juror found himself unable to
5 be fair and impartial.

6 Upon inquiry, the Court will note that the juror
7 himself indicated he would not be more inclined to give that
8 witness' testimony greater weight or more truth than any
9 other witness who might testify.

10 The Court does not feel it necessary then to
11 dismiss the juror, seating the alternate.

12 The Motion to Dismiss the juror is denied.

13 Has your witness appeared yet, Ms. Thomas?

14 MS. THOMAS: May I walk out into the hallway?

15 THE COURT: Yes. We're going to need to
16 proceed, ma'am.

17 MS. THOMAS: I understand.

18 THE COURT: Ms. Thomas, the bench conference had
19 nothing to do with this case. Totally unrelated. Has your
20 witness appeared, ma'am.

21 MS. THOMAS: She has not.

22 THE COURT: Okay. Do you -- it's 20 minutes
23 after 2:00; maybe the clock may be a little fast; it may be
24 16 or 17 minutes after 2:00.

25 I'm more than willing to wait a reasonable amount

1 of time. But, do you know what might be keeping your witness
2 from arriving?

3 MS. THOMAS: Your Honor, I do not. She was here
4 this morning; court was adjourned and she was instructed to
5 be back at a little before 2:00.

6 THE COURT: All right. Will this be your last
7 witness, ma'am?

8 MS. THOMAS: Yes, it will, Your Honor.

9 THE COURT: Will the state have rebuttal
10 evidence?

11 MR. COTTRELL: No, Your Honor.

12 THE COURT: Well, I tell you what we can do, Ms.
13 Thomas, it's possible for you do so, without revealing your
14 trial strategy or something, do you expect from this witness
15 any type of information or evidence which would be of a
16 totally different nature than has been presented to this
17 point?

18 And, what I'm getting at, if this is going to be
19 your last witness and the witness is merely going to -- and,
20 I say "merely" without any attempt to minimize the importance
21 of any witness' testimony. But, if the witness is going to
22 testify as to matters which have already been presented to
23 the jury, it could well be that we could move ahead then with
24 motions or even some other matters, while we wait.

25 But, if you feel this witness would -- should be

1 heard before any that we move on then, that's fine and I'll
2 wait just a few more minutes.

3 MS. THOMAS: Your Honor, this was a witness who
4 contacted me who has previously testified, who contacted me,
5 requesting to testify again and clarify the earlier
6 testimony.

7 THE COURT: Okay.

8 MR. COTTRELL: And Your Honor, just to clarify
9 something, the Court asked earlier if there is going to be
10 rebuttal evidence. The state would intend to introduce the
11 photograph of the defendant, State's Exhibit No. 7; and, it
12 having been identified by several witnesses.

13 But, I suppose that would be considered rebuttal
14 evidence.

15 THE COURT: I have a note here, "The state needs
16 to introduce State's Exhibit No. 7."

17 MR. COTTRELL: Thank you, Your Honor.

18 THE COURT: Ms. Thomas, do you wish this witness
19 to testify before say -- before I heard any motions that you
20 wish to make, at the close of all the evidence?

21 MS. THOMAS: Your Honor, I think we can go-ahead
22 with the motions.

23 THE COURT: Okay. Let's just do that. We'll
24 proceed in a bit of legal diction; as if the witness has
25 testified; and as if all sides have rested; as if State's

1 Exhibit No. 7 has been offered; and as if the Court had
2 allowed the submission; as if then all parties had rested.

3 And, I'll hear the parties then, if there are
4 motions to be made, at the close of all the evidence. By
5 moving ahead in this matter, thought, the Court is not
6 precluding parties from introducing evidence. I'm just
7 making an effort to use time, as best we can.

8 So, proceeding then, in the -- just as if everyone
9 had rested, what says the parties, at the close of all
10 evidence?

11 Does the state have anything they wish to present,
12 at the close of all the evidence?

13 MR. COTTRELL: No, Your Honor.

14 THE COURT: All right. I'll hear from the
15 defense then. What says the defense, at the close of all the
16 evidence?

17 MS. THOMAS: Your Honor, I did not introduce or
18 introduce my exhibits into evidence. And, I would like to
19 reserve the right to introduce Exhibit Nos. 1 through 5 into
20 evidence and publish them to the jury.

21 THE COURT: All right. I'll let you do that.
22 And, I -- 3, 4 and 5 have been introduced; 1 and 2 have not.
23 I will accept 1 and 2 as business records and have now been
24 properly and sufficiently identified by Mr. Brady Dorsey.
25 And, I will allow those to be admitted. And, I will allow

1 you to publish them to the jury.

2 MS. THOMAS: And, at the end of all the evidence, I
3 would make a Motion to Dismiss all the charges against Mr.
4 Shawn Massey; the breaking and entering, the three counts of
5 kidnapping, and the robbery with a dangerous weapon charge.

6 I would contend that after all the evidence has
7 been entered, there is not enough evidence to support a
8 conviction and we would request that the cases against Mr.
9 Massey be dismissed, for that reason.

10 THE COURT: All right. At the close of all
11 evidence, the Motion to Dismiss the charges will be denied.
12 The Court is of the opinion sufficient evidence does exist
13 for the cases to proceed to the jury.

14 We can move on ahead a little bit further then.
15 I'll hear from the parties, as to first the charges that you
16 feel should go to the jury and the possible arrangement then
17 of verdict sheets.

18 On the charge of robbery with a dangerous weapon,
19 what's the contention of the state to that charge going to
20 the jury?

21 MR. COTTRELL: Is the defendant guilty or not
22 guilty of robbery with a dangerous weapon?

23 THE COURT: Okay. What says the defendant?

24 MS. THOMAS: We would ask for a charge and
25 instruction on common-law robbery, guilty or not guilty.

1 MR. COTTRELL: Your Honor, the state would OBJECT
2 to that.

3 THE COURT: I'll hear you, if you wish to be
4 heard, Ms. Thomas, on that. The evidence has not been
5 presented -- not been refuted, as I recall, that the
6 intruder, whoever that might have been, did have and the
7 victim's appearance of a firearm.

8 I think the law is though that the person actually
9 had a firearm or that it reasonably appeared to the victim
10 that a firearm was being used.

11 And, it would be my recollection of the evidence
12 that there would be evidence to satisfy that prong. I'll
13 hear you then as to your theory of why common-law robbery
14 should be presented, if you wish to argue it.

15 MS. THOMAS: I do not wish to make an argument.

16 THE COURT: Okay. That request is denied, for the
17 lesser charge. And, the verdict then would be guilty or not
18 guilty of robbery with a dangerous weapon.

19 As to the counts of kidnapping, what says the
20 state.

21 MR. COTTRELL: In each of the three counts, Your
22 Honor, guilty or not guilty of second-degree kidnapping.

23 THE COURT: Okay. I'll hear from the defense on
24 the different theory.

25 MS. THOMAS: We have NO OBJECTION as to those

1 charges.

2 THE COURT: Okay. As to each of those charges
3 then, the verdict sheet should be, "Guilty of second-degree
4 kidnapping"; or, "Not guilty."

5 And, as to the charge of felonious breaking and
6 entering, I'll hear from the state. What says the state?

7 MR. COTTRELL: Your Honor, I think the evidence is
8 clear that there is enough to support a charge of felonious
9 breaking and entering. However, Your Honor, I believe the
10 case law --

11 THE COURT: Stand up, if you would please.

12 MR. COTTRELL: Thank you, Your Honor. I believe
13 the case law would also require the Court to instruct on the
14 lesser-included charge of misdemeanor breaking and entering.

15 THE COURT: All right. What says the defense?

16 MS. THOMAS: We would request the instruction on
17 misdemeanor breaking and entering.

18 THE COURT: All right. The Court will instruct
19 the jury and the verdict sheet should so reflect the possible
20 verdict of "Guilty of felonious breaking and entering,"
21 "Guilty of non-felonious breaking and entering"; or, "Not
22 guilty."

23 And, those will be the verdict sheets.

24 We can move ahead a little bit further then with
25 possible jury instructions, if the parties are ready to

1 proceed with that. Are the parties ready to proceed with
2 that?

3 MR. COTTRELL: The state is ready, Your Honor.

4 THE COURT: All right. Let me just advise you
5 some instructions, that I have in mind; then I will allow the
6 state and the defense to be heard on instructions they would
7 like the Court to include or objections to any instructions
8 that I've indicated.

9 On the underlying offenses, I'll instruction
10 patterned jury instructions, robbery with a firearm, at
11 217.20; second-degree kidnapping, I'll instruction on 210.35;
12 in the charge of kidnapping concerning Samantha Wood, the
13 instruction would include as a third element that the
14 defendant confined or restrained the person for the purpose
15 of facilitating a felony; and, the felony being -- well, what
16 felony does the state contend?

17 MR. COTTRELL: Your Honor, we would contend for the
18 purpose of felony of robbery with a dangerous weapon.

19 THE COURT: I'm sorry.

20 MR. COTTRELL: Robbery with a dangerous weapon.

21 THE COURT: Okay. And, what says the defense as
22 to the instruction of kidnapping, concerning Samantha Wood?

23 MS. THOMAS: No objection.

24 THE COURT: Okay. As to the kidnapping charges

25 concerning Brandon Wood and Leola Smith, would be a slight
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 87 of 157

1 difference then, in that the evidence does indicate that the
2 person had not yet reached their 16th birthday and the parent
3 did not consent to their confinement or restraint.

4 So, there would be a slight difference in those,
5 otherwise, the instruction would be the same, as in the
6 previous one.

7 Is that the state's contention?

8 MR. COTTRELL: Yes, Your Honor.

9 THE COURT: And, what says the defense then, as to
10 that instruction?

11 MS. THOMAS: No objection.

12 THE COURT: Okay. Those will be the instructions
13 then on the other two kidnapping charges.

14 And, the breaking and entering charge will also be
15 from the patterned jury instructions on the charge of
16 felonious breaking and entering and misdemeanor breaking and
17 entering. I think it's 214.30, in the patterned jury
18 instructions.

19 And, I don't have, at the moment, the misdemeanor
20 breaking and entering instruction in front of me. But, I
21 would intend to instruct from the patterned jury instructions
22 on that, as well.

23 What says the state then, as to those instructions?

24 MR. COTTRELL: Your Honor, the state is satisfied
25 with the patterned jury instructions for each of those

1 offenses.

2 THE COURT: What says the defense?

3 MS. THOMAS: We're satisfied.

4 THE COURT: Okay. Now, on the preliminary
5 instructions, I would start with 101.05, function of the
6 jury; 101.10, burden of proof and reasonable doubt; 101.15,
7 credibility of witnesses; 101.20, weight of the evidence.

8 The defendant, in giving their forecast of the last
9 presentation of evidence, does not include the defendant's
10 testimony. So, does the defense desire an instruction from
11 the patterned jury instructions at 101.30, affect of the
12 defendant's decision not to testify?

13 MS. THOMAS: We do.

14 THE COURT: That will be included. Does the state
15 request instruction on circumstantial evidence?

16 MR. COTTRELL: We do, Your Honor.

17 THE COURT: Okay. The Court has heard evidence
18 which would, in the Court's opinion, support an instruction
19 on circumstantial evidence, such as the testimony of Theresa
20 Savall, of the defendant being present in the location, at
21 the same time that the robbery was said to have been
22 committed or a person she identified as the defendant.

23 I'll include circumstantial evidence, unless the
24 defense can talk me out of it. Does the defense wish to be

25 heard on circumstantial evidence?

1 MS. THOMAS: Your Honor, we would oppose the
2 instruction on circumstantial evidence because the
3 circumstantial evidence offered by Ms. Savall would make him
4 merely present in the area; nothing more than that. And, her
5 testimony of the person she saw was dressed entirely
6 differently. And, she could not really pinpoint the exact
7 time that she saw this person in the area.

8 THE COURT: Okay. I'm going to include
9 circumstantial evidence so the jury can, I think, needs to be
10 instructed on what circumstantial evidence is. And so, I
11 will include that instruction.

12 Note the defense objection to that instruction.

13 I will include 104.20, testimony of interested
14 witnesses.

15 I will include 104.90, identification of the
16 defendant as the perpetrator of the crime.

17 And, I will include 105.20, impeachment or
18 corroboration by prior statements.

19 Those are some instructions I had in mind. I'll
20 hear from the state and then from the defense as to any other
21 instructions they would like the Court to consider.

22 What says the state?

23 MR. COTTRELL: Your Honor, the state is satisfied
24 with the list that the Court has provided.

25 THE COURT: What says defense, without asking me

1 to waive any objections you've made?

2 MS. THOMAS: We would request an instruction on
3 alibi.

4 THE COURT: Okay. I believe I have that one
5 pulled. Let me look. No; I don't. But, I can find it.
6 Okay; 301.10, I believe is the instruction on alibi. It's a
7 short, 3-paragraph instruction.

8 Does the state wish to be heard on giving the
9 instruction on alibi?

10 MR. COTTRELL: No, Your Honor; we don't.

11 THE COURT: I'll include that then; 301.10
12 instruction on alibi.

13 Okay. Anything else from the defense then as to
14 the instructions to be given to the jury?

15 MS. THOMAS: No, Your Honor.

16 THE COURT: All right. Well, we have had our
17 charge conference. I'll conclude, by the way, with the
18 patterned jury instructions of those instructions so aptly
19 entitled, "Concluding instructions," at 101.35. And, those
20 would be the instructions.

21 Anything else concerning the charges to be
22 submitted to the jury; the possible verdicts then or the
23 instructions to be given to the jury, from the state?

24 MR. COTTRELL: No, Your Honor.

25 THE COURT: Anything from the defense?

1 MS. THOMAS: No, Your Honor.

2 THE COURT: All right. The clerk, ever-efficient,
3 has already prepared our verdict sheets which read:
4 [Reading.]

5 "Guilty of robbery with a dangerous weapon"; or,
6 "Not guilty."

7 "Guilty of second-degree kidnapping"; and, there
8 are three charges; or, "Not guilty."

9 And, "Guilty of felonious breaking or entering";
10 or, "Guilty of non-felonious breaking or entering"; or, "Not
11 guilty"; the final charge.

12 Do the parties wish to inspect them? They are
13 here.

14 Okay. What says the state about the verdict
15 sheets?

16 MR. COTTRELL: The state is satisfied, Your Honor.

17 THE COURT: And, what says the defense?

18 MS. THOMAS: We're satisfied.

19 THE COURT: Okay. That, I believe, is every issue
20 that I can think of we would need to do, before actually
21 bringing the jury back in. Is your witness present, yet?

22 MS. THOMAS: She is.

23 THE COURT: Okay. We'll bring the jury back in,
24 in just a moment then. And, when we do, the defendant may
25 call it's next witness. After that, or at any time you wish

1 to, in your final presentation of evidence you wish to move
2 the admission of the items you've indicated; if you wish to
3 have them published to the jury, I would likely allow that;
4 and, you may do that.

5 The state has indicated that it would, on rebuttal,
6 be offering what has been referred to at various times as
7 State's Exhibit No. 7, a photograph of the defendant.

8 I would be inclined to allow that photograph. And,
9 we'll move from there.

10 Now, once all that is done though, would the
11 parties then be ready to proceed right into the closing
12 arguments?

13 MS. THOMAS: Yes; we will, Your Honor.

14 MR. COTTRELL: The state will be.

15 THE COURT: The defense has offered evidence. So,
16 the state would be entitled to an opening and a closing
17 argument.

18 Does the state wish to make an opening argument?

19 MR. COTTRELL: No, Your Honor; we do not.

20 THE COURT: All right. When we do closing
21 arguments then, the jury will be with the defense.

22 All right. Sheriff, bring our jury in.

23 {Thereupon, the following proceedings take place in open
24 court, in the presence of the jury.}

25 THE COURT: The Court will note that all of our

1 jurors are present. Members of the jury, sorry for the
2 delay. We did have another matter or two we needed to
3 discuss that did have to be resolved out of your presence.
4 We have resolved those matters and we are ready to proceed.

5 The defense can call it's next witness.

6 MS. THOMAS: Mr. Massey would next call Ms. April
7 Pride Thompson.

8 THE COURT: All right. Ms. Thompson, would you
9 come around to the witness stand.

10 THE COURT: Ms. Thompson was earlier called as a
11 state's witness and is still under oath. So, she can just
12 take the witness stand then.

13 You are still under oath, Ms. Thompson. The
14 witness is with the defendant.

15 APRIL PRIDE THOMPSON, BEING FIRST DULY SWORN, TESTIFIES AS
16 FOLLOWS DURING DIRECT EXAMINATION BY MS. THOMAS:

17 Q. State your name, please.

18 A. April Pride Thompson.

19 Q. And, Ms. Thompson, you testified yesterday for the state.
20 Is that correct?

21 A. Yes.

22 Q. And, you have now been called to testify as a defense
23 witness. Is that correct?

24 A. Yes.

25 Q. And, going back to your testimony yesterday, about your
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 94 of 157

1 conversation with Officer Esposito, where did that
2 conversation take place?

3 A. It took place on the outside of our apartment. We were on
4 the sidewalk, close to the parking lot.

5 Q. Close to the parking lot?

6 A. Yes.

7 Q. And, do you recall what time of day that occurred?

8 A. It was in the evening; probably about 5:30 or 6:00.

9 Q. Would you characterize this as Officer Esposito did as a
10 casual conversation?

11 A. Yes.

12 Q. How was Officer Esposito dressed?

13 A. He did have on his officer's uniform.

14 Q. Did Officer Esposito take any notes as he talked with you?

15 A. No. I do not recall him writing anything.

16 Q. Did you see him with any pad or notebook or any writing
17 instruments?

18 A. No.

19 Q. And, did you recall what day of the week this was on?

20 A. I believe it was a weekday; possibly a Friday.

21 Q. Why do you believe it was a Friday?

22 A. Because, I had just got home from work and I had talked
23 with my husband the next day about an officer coming to see
24 me. And, I talked with him on a Saturday.

25 Q. Are you talking to a different officer the next day?

1 A. No. I talked with my husband the next day, telling him
2 someone had come to see me the day before.

3 Q. Why do you believe the conversation with your husband
4 occurred on Saturday?

5 A. Because he did not come to my house on Friday night; he
6 came on a Saturday.

7 Q. And, do you know what night Shawn Massey spent the night
8 with you?

9 A. That was probably that Thursday night.

10 Q. And, can you say with certainty, what time Shawn Massey
11 left that morning?

12 MR. COTTRELL: OBJECTION, Your Honor. This has
13 already been covered in prior testimony.

14 THE COURT: I couldn't hear you.

15 MR. COTTRELL: OBJECTION; asked and answered, Your
16 Honor.

17 THE COURT: OVERRULED. She can answer the
18 question.

19 A. He was still there when I left.

20 Q. What time did you leave?

21 A. I left approximately 6:45.

22 Q. Did Shawn Massey have braids in his hair?

23 A. No.

24 Q. Are you positive?

25 A. Yes.

1 Q. Did you say anything to Officer Esposito about Shawn
2 Massey having braids?

3 A. No.

4 Q. You didn't make a written statement to Officer Esposito;
5 did you?

6 A. No.

7 Q. You didn't sign your name to any statement that he wrote;
8 did you?

9 A. No.

10 Q. And, you said Officer Esposito was not taking notes, as he
11 spoke with you. Is that correct?

12 A. That is correct.

13 Q. Did Shawn Massey frequently come to your house?

14 A. Yes.

15 Q. How often did he come to your house?

16 MR. COTTRELL: OBJECTION, once again, Your Honor.

17 Asked and answered in earlier testimony.

18 THE COURT: OVERRULED. I'll let her answer.

19 A. He came quite frequently.

20 Q. And, you stated that you had lived at that address how
21 long?

22 A. At that time, it had been almost a year. I'm still living
23 there now; so, it's almost two years.

24 Q. Had Shawn Massey visited your home frequently, during the
25 year you lived there?

1 A. Yes.

2 Q. And, when you previously lived there, did Shawn Massey
3 visit you frequently?

4 A. Yes.

5 Q. And, did he participate in the recreational activity,
6 sponsored by the complex?

7 A. Yes. If I did, he participated.

8 Q. Did he go fishing in the lake?

9 A. Yes.

10 Q. And, did he frequent the swimming pool and the
11 recreational area?

12 A. Yes.

13 Q. Now, when Shawn Massey was at your residence, did you
14 ever know him to carry a weapon?

15 A. No.

16 Q. Did you ever see him with a weapon?

17 A. No.

18 Q. Did you ever hear Shawn Massey discuss having a weapon?

19 A. No.

20 Q. Do you ever -- do you recall him ever wearing red, at or
21 near that or any other time he was at your house?

22 A. No.

23 MS. THOMAS: Thank you Ms. Thompson. No further
24 questions.

25 THE COURT: Cross examination.

1 [CROSS EXAMINATION OF MS. THOMPSON, BY MR. COTTRELL:]

2 Q. Ms. Thompson, your testimony is you have never seen the
3 defendant wear red?

4 A. To my recollection, I can never recall seeing him with
5 anything red.

6 Q. And, ma'am, did you ever take any written notes of your
7 conversation with Officer Esposito, the day that you spoke
8 with him outside your apartment?

9 A. Did I?

10 Q. Yes, ma'am.

11 A. No.

12 Q. You didn't take any notes?

13 A. No.

14 Q. You never memorialized that conversation in any kind of
15 way; no notes; no tapes or anything like that?

16 A. No.

17 MR. COTTRELL: Thank you.

18 MS. THOMAS: Just one other question.

19 RE-DIRECT EXAMINATION OF MS. THOMPSON, BY MS. THOMAS:

20 Q. Has Shawn Massey lost a lot of weight or --

21 MR. COTTRELL: OBJECTION, Your Honor; outside the
22 scope.

23 THE COURT: Well, it is outside the scope of
24 cross-examination. OBJECTION SUSTAINED.

25 MS. THOMAS: No further questions.

1 THE COURT: Any further questions -- well, no
2 questions were actually asked. You can step down, ma'am.

3 All right. Any further evidence for the defense?

4 MS. THOMAS: At this time, I would move that
5 Defendant's Exhibit Nos. 1 through 5 be INTRODUCED INTO
6 EVIDENCE AND ALSO PUBLISHED TO THE JURY.

7 THE COURT: All right. The Court has received 3,
8 4 and 5; Defendant's Exhibit Nos. 1 and 2 WILL BE ADMITTED.

9 And Sheriff, if you would please, assist in the
10 publication of Defendant's Exhibit Nos. 1, 2, 3, 4 and 5 to
11 the jury.

12 Members of the jury, these are being passed to you
13 at their request. Please examine them carefully,
14 individually and without comment to your fellow jurors.
15 [Defendant's Exhibit Nos. 1 through 5 are passed to the
16 jury.]

17 THE COURT: Counsel approach the bench for just a
18 second, please.
19 {Conference at sidebar, outside the hearing of the jury, with
20 all attorneys present.}
21 {Thereupon, the following proceedings take place in open
22 court, within the hearing of the jury.}

23 THE COURT: All right. Members of the jury, is
24 there anyone who hasn't had a chance to review Defendant's
25 Exhibit Nos. 1 through 5?

1 JURY: [No verbal response.]

2 THE COURT: Seeing no hands being raised. All
3 right. Anything else for the defense?

4 MS. THOMAS: No, Your Honor.

5 THE COURT: Any rebuttal evidence for the state?

6 MR. COTTRELL: Yes, Your Honor. The state would
7 MOVE TO ADMIT, State's Exhibit No. 7; and, we would also like
8 that to be published to the jury.

9 THE COURT: All right. State's Exhibit No. 7 then
10 WILL BE ADMITTED. That is identified as a photograph of the
11 defendant.

12 Sheriff, if you will please, take State's Exhibit
13 No. 7 and publish it to the jury.

14 Members of the jury, as stated before, examine the
15 item carefully, individually and without comment to your
16 fellow jurors.

17 [State's Exhibit No. 7 is passed to the jury.]

18 THE COURT: Members of the jury, is there any
19 member of the jury who has not had an opportunity to examine
20 State's Exhibit No. 7?

21 JURY: [No verbal response.]

22 THE COURT: Seeing no hands being raised, anything
23 else from the state?

24 MR. COTTRELL: No, Your Honor.

25 THE COURT: Anything else from the defense?

1 MS. THOMAS: No, Your Honor.

2 THE COURT: Members of the jury, all of the
3 evidence then has been presented to you. And, it is now time
4 for the final arguments of the attorneys.

5 At the conclusion of their final arguments, I'll
6 instruct you on the law in this case; and then, you will be
7 taken to the jury room to begin your deliberations.

8 Now, Members of the jury the final arguments of the
9 attorneys are not evidence but are given to assist you in
10 evaluating the evidence that you heard.

11 The lawyers are permitted in their final arguments
12 to argue, to characterize the evidence and to attempt to
13 persuade you to a particular verdict.

14 Now, it is of course improper in a final argument
15 for an attorney to become abusive or to inject personal
16 experiences or to express personal beliefs as to the guilt or
17 innocence of a defendant; or, to make argument on the basis
18 of matters outside the record.

19 A lawyer may however, on basis of that lawyer's
20 analysis of the evidence, argue any positions or any
21 conclusion with respect to a matters in issue.

22 If however, in the course of making a final
23 argument, an attorney attempts to restate a portion of the
24 evidence to you, and your recollection of the evidence
25 differs from what the attorney said, then you are to be

1 exclusively by your own recollection of the evidence.

2 The jury will be with the defendant.

3 [CLOSING ARGUMENT, BY MS. THOMAS]

4 [CLOSING ARGUMENT, BY MR. COTTRELL]

5 [JURY CHARGE, BY JUDGE JAMES L. BAKER, at 3:55 p.m.]

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

JURY CHARGE

1
2 JAMES L. BAKER: Ladies and gentlemen of the jury,
3 all of the evidence has been presented to you. It is now
4 your duty to decide from this evidence what the facts are.
5 You must then apply the law which I am about to give you to
6 those facts.

7 Now, it is absolutely necessary that you understand
8 and apply the law, as I give it to you, not as you think the
9 law is or as you might like it to be. This, of course, is
10 important because justice requires that everyone who is tried
11 for the same crime be treated in the same way and have the
12 same law applied to him.

13 Members of the jury, in this case, as you know, the
14 defendant, Mr. Massey, has entered a plea of "Not guilty."

15 The fact that he has been charge is no evidence of
16 his guilt. Under our system of justice, when a defendant
17 pleads "Not guilty" he is not required to prove his
18 innocence. But, he is presumed to be innocent. The state
19 must prove to you that the defendant is guilty, beyond a
20 reasonable doubt.

21 A reasonable doubt is a doubt based on reason and
22 common sense, arising out of some or all of the evidence that
23 has been presented or the lack or insufficiency of the
24 evidence, as the case may be.

1 satisfies or entirely convinces you of the defendant's guilt.

2 Members of the jury, you are the sole judges of the
3 credibility of each witness. You must decide for yourselves
4 whether to believe the testimony of any witness. You may
5 believe all or any part or none of what a witness has said on
6 the stand.

7 In determining whether to believe any witness, you
8 should apply the same tests of truthfulness which you apply
9 in your own everyday lives.

10 As applied to this trial, those tests may include:

11 The opportunity of the witness to see, or hear, or
12 know or remember the facts or occurrences about which the
13 witness testified;

14 The manner and the appearance of the witness;

15 Any interest, or bias or prejudice that witness
16 might have;

17 The apparent understand and fairness of the
18 witness;

19 Whether the witness' testimony is reasonable; and,

20 Whether the witness' testimony is consistent with
21 other believable evidence in this case.

22 You are the sole judges of the weight to be given
23 any evidence. And, by this I mean if you decide that certain
24 evidence is believable, you must then determine the

25 importance of that evidence, in light of all the other
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 105 of 157

1 believable evidence in this case.

2 Now, Members of the jury, in this case, the
3 defendant has not testified. The law of North Carolina gives
4 him this privilege. The same law also assures him that his
5 decision not to testify creates no presumption against him.
6 Therefore, his silence is not to influence your decision in
7 any way.

8 Members of the jury, there are two types of
9 evidence from which you may find the truth as to the facts of
10 a case. Direct evidence and circumstantial evidence.

11 Direct evidence is the testimony of one who asserts
12 actual knowledge of a fact, such as an eyewitness.

13 Circumstantial evidence is proof of a chain or
14 group of facts and circumstances indicating the guilt or
15 innocence of the defendant.

16 The law makes no distinction between the weight to
17 be given to either direct or circumstantial evidence. Nor is
18 a greater degree of certainty required of circumstantial
19 evidence than of direct evidence.

20 You should weigh all of the evidence in the case.
21 And, after weighing all of the evidence, if you're not
22 convinced of the guilt of the defendant, beyond a reasonable
23 doubt, you must find him "Not guilty."

24 Members of the jury, you may find that a witness

25 who has testified is interested in the outcome of this
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 106 of 157

1 hearing.

2 In deciding whether or not to believe such a
3 witness, you may take his or her interest into account.

4 If, after doing so, you believe the testimony of
5 the witness, in whole or in part, you should treat what you
6 believe, the same as any other believable evidence.

7 Members of the jury, I instruct you that the state
8 has the burden of proving the identity of the defendant as
9 the perpetrator of the crimes charged, beyond a reasonable
10 doubt.

11 This means that you, the jury, must be satisfied,
12 beyond a reasonable doubt, that the defendant, was a
13 perpetrator of the crimes charged before you may return a
14 verdict of guilty.

15 Members of the jury, when evidence has been
16 received tending to show, that an earlier time, a witness
17 made a statement which may be consistent with or may conflict
18 with his or her testimony at this trial, you must not
19 consider such earlier statement as evidence of the truth of
20 what was said at that earlier time, because it was not made
21 under oath at this trial.

22 If you believe such earlier statement was made and
23 that it is consistent with or does conflict with the
24 testimony of the witness, at this trial, then you may

25 consider this, together with all other facts and

1 circumstances bearing upon the witness' truthfulness, in
2 deciding whether you will believe or disbelieve that witness'
3 testimony, at this trial.

4 Now Members of the jury, the defendant contends
5 that he was at some other place at the time the offenses are
6 said to have taken place. This is known as an alibi. The
7 word "alibi" simply means, "somewhere else."

8 The burden of proving an alibi does not rest upon
9 the defendant. To establish the defendant's guilt, the state
10 must prove, beyond a reasonable doubt, that the defendant was
11 present at and participated in the crimes charged.

12 The defendant's contention that he was not present
13 and did not participate is simply a denial of facts essential
14 to the state's case.

15 Therefore, I charge that if, upon considering all
16 of the evidence in this case, including the evidence with
17 respect to alibi, you have a reasonable doubt as to the
18 defendant's presence at or participation in the crimes
19 charged, you must find him not guilty.

20 Members of the jury, the defendant has been accused
21 of five separate charges. I'm going to discuss each of those
22 with you, one at a time, beginning with the charge of robbery
23 with a firearm.

24 Members of the jury, the defendant has been accused
25 of **ROBBERY WITH A DANGEROUS WEAPON, A FIREARM**, which is the

1 taking and carrying away the personal property of another,
2 from that person or in his presence, without his or her
3 consent, by endangering or threatening a person's life with a
4 firearm, the taker knowing that he was not entitled to take
5 the property and intending to deprive another of its use,
6 permanently.

7 Now, I charge that for you to find the defendant
8 "Guilty of robbery with a firearm," the state must prove
9 seven things, beyond a reasonable doubt.

10 First, that the defendant took property from the
11 person of another or in her presence.

12 Second, that the defendant carried away this
13 property.

14 Third, that the [defendant] did not voluntarily
15 consent to the taking and carrying away of the property.

16 Fourth, that the defendant knew he was not entitled
17 to take the property.

18 Fifth, that at the time of the taking, the
19 defendant intended to deprive that person of its use,
20 permanently.

21 Sixth, that the defendant had a firearm in his
22 possession at the time he obtained the property or that it
23 reasonably appeared to the victim that a firearm was being
24 used.

25 In which case, you may infer that said instrument
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 109 of 157

1 was what the defendant's conduct represented it to be.

2 And seventh, that the defendant obtained the
3 property by endangering or threatening the life of that
4 person or another person with a firearm.

5 So, I charge that if you find, from the evidence,
6 beyond a reasonable doubt, that on or about the alleged date,
7 May 22, 1998, the defendant had in his possession a firearm;
8 and, took and carried away property from the person or
9 presence of the person; without her voluntary consent; by
10 endangering her or another person's life with the use or
11 threatened use of a firearm; the defendant knowing that he
12 was not entitled to take the property; and, intending to
13 deprive that person of its use permanently; it would be your
14 duty to return a verdict of "Guilty of robbery with a
15 firearm."

16 However, if you do not so find or a reasonable
17 doubt as to one or more of these things, it would be your
18 duty to return a verdict of "Not guilty."

19 The defendant has also been accused of the **SECOND-**
20 **DEGREE KIDNAPPING** of Samantha Wood. Now, I charge that for
21 you to find the defendant "Guilty of second-degree
22 kidnapping," the state must prove four things, beyond a
23 reasonable doubt.

24 First, that the defendant unlawfully confined
25 Samantha Wood, that is, imprisoned her, within a given area;

1 or, restrained Samantha Wood. That is, restricted her
2 freedom of movement.

3 Second, that the Samantha Wood did not consent.

4 Third, that the defendant confined or restrained
5 Samantha Wood for the purpose of facilitating his commission
6 of a felony, robbery with a dangerous weapon.

7 Remember my instructions to you on what constitutes
8 robbery with a dangerous weapon.

9 And fourth, that this confinement or restraint was
10 a separate, complete act, independent of and apart from the
11 robbery with a dangerous weapon.

12 So, Members of the jury, I charge that if you find,
13 from the evidence, beyond a reasonable doubt, that on or
14 about the alleged date, the defendant unlawfully confined or
15 restrained Samantha Wood; and, that the person did not
16 consent; and, that this was done for the purpose of
17 facilitating the defendant's commission of a felony, robbery
18 with a dangerous weapon; and, that this confinement or
19 restraint was a separate, complete act, independent of and
20 apart from the robbery with a dangerous weapon, it would be
21 your duty to return a verdict of "second-degree kidnapping of
22 Samantha Wood."

23 However, if you do not so find or if you have a
24 reasonable doubt as to one or more of these things, it would
25 be your duty to return a verdict of "Not guilty."

1 Now Members of the jury, the defendant has also
2 been accused of **TWO ADDITIONAL COUNTS OF SECOND-DEGREE**
3 **KIDNAPPING;** the second-degree kidnapping of Samantha Wood's
4 two children; Brandon Wood and Leola Smith.

5 My instructions on these two charges will be the
6 same, except for the names. I'm not going to repeat these
7 instructions to you again, two separate times. But, I'll
8 direct you to apply these instructions in each case.

9 Now Members of the jury, I charge that for you to
10 find the defendant "Guilty of second-degree kidnapping," of
11 either of Samantha Wood's two children, the state must prove
12 four things, beyond a reasonable doubt.

13 First, that the defendant unlawfully confined that
14 child, that is, imprisoned him or her, within a given area;
15 or, restrained that child. That is, restricted his or her
16 freedom of movement.

17 Second, that the child had not reached his or her
18 16th birthday; and that his or her parent did not consent to
19 the confinement or restraint.

20 Third, that the defendant confined or restrained
21 the child for the purpose of facilitating his commission of a
22 felony, robbery with a dangerous weapon.

23 Remember again my instructions to you on robbery
24 with a dangerous weapon.

25 And fourth, that this confinement or restraint was

1 a separate, complete act, independent of and apart from the
2 felony of robbery with a dangerous weapon.

3 So, Members of the jury, I charge that if you find,
4 from the evidence, beyond a reasonable doubt, that on or
5 about the alleged date, the defendant unlawfully confined or
6 restrained that child; that that child had not reached his or
7 her 16th birthday; and, his or her parent did not consent to
8 this confinement or restraint; and, that this was done for
9 the purpose of facilitating the defendant's commission of a
10 felony, robbery with a dangerous weapon; and, that this
11 confinement or restraint was a separate, complete act,
12 independent of and apart from the felony of robbery with a
13 dangerous weapon, it would be your duty to return a verdict
14 of "second-degree kidnapping."

15 However, if you do not so find or if you have a
16 reasonable doubt as to one or more of these things, it would
17 be your duty to return a verdict of "Not guilty."

18 Now Members of the jury, the last charge that the
19 defendant has been accused of is **FELONIOUS BREAKING AND**
20 **ENTERING** into another's building, without her consent, with
21 the intent to commit a felony.

22 Now, I charge that for you to find the defendant
23 guilty of felonious breaking or entering, the state must
24 prove four things, beyond a reasonable doubt.

25 First, that there was either a breaking or an entry

1 by the defendant. Gaining access to an apartment with the
2 threat of violence to the residence would be an entry.

3 Second, that the state must prove that it was a
4 building that was broken into or entered.

5 And third, that the owner did not consent to this
6 breaking or entering.

7 And fourth, at the time of the breaking or entering
8 the defendant intended to commit a felony. In this case,
9 larceny.

10 Larceny is the taking and carrying away of the
11 personal property of another; without her consent; and with
12 the intent to deprive her of possession permanently.

13 So I charge, Members of the jury, if you find from
14 the evidence, beyond a reasonable doubt, that on or about the
15 alleged date, May 22, 1998, the defendant, Shawn Massey,
16 broke into or entered a building; without the consent of the
17 owner; intending at the time to commit a felony, larceny; it
18 would be your duty to return a verdict of "Guilty to
19 felonious breaking or entering."

20 However, if you do not so find or if you have a
21 reasonable doubt as to one or more of these things, you will
22 not return a verdict of "Guilty of felonious breaking or
23 entering."

24 If you do not find the defendant "Guilty of
25 felonious breaking or entering" you must determine whether he

1 is guilty of non-felonious breaking or entering.

2 Non-felonious breaking or entering, differs from
3 felonious breaking or entering in that it need not be done
4 with the intent to commit a felony, so long as the breaking
5 or entering was wrongful; that is, without any claim of
6 right.

7 So I charge, Members of the jury, if you find from
8 the evidence, beyond a reasonable doubt, that on or about the
9 alleged date, May 22, 1998, the defendant, Shawn Massey,
10 wrongfully broke into or entered another person's building;
11 without her consent; but, do not find, beyond a reasonable
12 doubt, that he intended to commit a felony, larceny; it would
13 be your duty to return a verdict of "Guilty to non-felonious
14 breaking or entering."

15 However, if you do not so find or if you have a
16 reasonable doubt as to one or more of these things, it would
17 be your duty to return a verdict of "Not guilty."

18 Now Members of the jury, you have heard the
19 evidence; you have heard the arguments of counsel for the
20 state and for the defendant.

21 I have not summarized the evidence in the case;
22 but, it's your duty to remember the evidence whether it's
23 been called to your attention or not.

24 And, as I have advised you, if your recollection of
25 the evidence differs from that of the District Attorney or of

1 the defense attorney, you are to rely solely upon your own
2 recollection of the evidence in your deliberations.

3 I have also not reviewed the contentions of the
4 state or of the defendant. But, it's your duty not only to
5 consider all the evidence but also to consider all the
6 arguments, the contentions and positions urged by the state's
7 attorney and the defendant's attorney in their speeches to
8 you; and, any other contention that arises from the evidence;
9 and, to weigh them all, in the light of your common sense and
10 as best as you can, to determine the truth of this matter.

11 Now, the law, as indeed it should, requires the
12 presiding Judge to be impartial. You are not to draw any
13 inference from any ruling I have made or any inflection in my
14 voice or any expression on my face or any question I might
15 have asked a witness or anything that I have said or done
16 during this trial to insinuate to you that I have an opinion
17 or as to whether any fact has or has not been proved; whether
18 any of the evidence should be believed or disbelieved; or, as
19 to what your findings ought to be.

20 It is your exclusive province to find the true
21 facts of the case and to render a verdict reflecting the
22 truth, as you find the truth to be.

23 I instruct you that a verdict is not a verdict
24 until all twelve jurors agree unanimously as to what your
25 decision shall be.

1 You may not render a verdict by a majority vote.

2 Now Members of the jury, when you have reached a
3 unanimous verdict, have your foreperson mark the appropriate
4 place on the verdict form, which I'll send in to you in a few
5 minutes, after you go into the jury room.

6 There will be a separate verdict sheet for each
7 charge.

8 Now Members of the jury, it does appear at this
9 time that we will not need the services of our alternate.
10 Mr. Frank, thank you very much, sir. You are free to go or
11 stay, as you see fit. You do need to step down now from the
12 jury box.

13 Members of the jury, as you retire to the jury
14 room, your first duty will be to select a member of the jury
15 to serve as your jury foreperson. It will be the duty of
16 this person to lead you in your deliberations.

17 Do not begin though, your deliberations on the
18 verdict until you have received the written verdict forms
19 from the bailiff.

20 Proceed immediately with the selection of your
21 foreperson. And, after receiving the written verdict form,
22 proceed with your verdict deliberations. And, when you have
23 reached a unanimous verdict as to each charge and are ready
24 to pronounce them; and, your foreman has marked the verdict

25 on the form; have your foreperson sign and date the verdict
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 117 of 157

1 sheets; notify the bailiff, by knocking on the door to the
2 jury room; and, you'll be returned to the courtroom to
3 pronounce your verdict.

4 Members of the jury, you may retire to select your
5 foreperson.

6 {The following proceedings take place in open court, outside
7 the presence of the jury.}

8 THE COURT: In the absence of the jury, I'll hear
9 from the state and from the defense your requests for
10 corrections or additions to the charge.

11 What says the state?

12 MR. COTTRELL: There are no such requests from the
13 state, Your Honor.

14 THE COURT: What says the defense? I will not ask
15 the defense to waiver their objections and exceptions.

16 MS. THOMAS: We're satisfied with the charge.

17 THE COURT: Sheriff, if you will, take the verdict
18 sheets. There is a blank notepad that the jury will also be
19 given to use during their deliberations.

20 And Sheriff, you may give the verdict sheets to the
21 jury. Thank you, sir. I've got the jury going out then at
22 about 4:10.

23 The parties can be at ease then while the jury
24 deliberates. I'll ask counsel not to go far, in case the
25 jury has a question or does reach a verdict.

1 Does the state have anything else it needs to do
2 before leaving Court?

3 MR. COTTRELL: I don't believe so, at this time.

4 THE COURT: All right. We'll be in recess then.
5 And, let me know if you need me in court for anything.

6 [JURY DELIBERATIONS BEGIN, at 4:10 p.m.]

7 [QUESTION BY THE JURY, at 4:55 p.m.]

8 THE COURT: The Court will note that everyone is
9 present. We have received a question, actually, two
10 questions from the jury, which reads as follows: [Reading.]

11 "When did the victim hear the defendant in court --
12 the defendant's voice, in court? The jury would like to
13 know."

14 "2. How far from scene of crime to defendant's
15 job?"

16 The second question I will tell the jury that it is
17 their evidence -- or rather, their duty to determine the
18 outcome of the case from the evidence that's been presented
19 to them.

20 And, the first, I will hear from the state and the
21 defense as to how they would like the Court to deal with the
22 first question. [Reading.]

23 "When did the victim hear the defendant in court?"

24 MR. COTTRELL: Your Honor, the evidence in this

25 case was that she heard the defendant's voice in a hearing
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 120 of 157

1 prior to the jury coming in. That's when that evidence came
2 out.

3 THE COURT: Well, you say that's the evidence.
4 How did the jury hear that?

5 MR. COTTRELL: The jury heard that. I asked her
6 the question, "Did you hear the defendant's voice in a
7 hearing in this matter, outside the presence of the jury?"
8 She said she did.

9 THE COURT: All right. What says the defense?

10 MS. THOMAS: I would just ask that the jury be
11 instructed to rely on their recollection.

12 THE COURT: I think that would be the best course
13 of action, rather than the Court starting to attempt to
14 repeat --

15 MR. COTTRELL: I would agree, Your Honor.

16 THE COURT: -- evidence to them. That would be my
17 instruction to them.

18 I will also send the jury home for the day and will
19 instruction them that they are to return tomorrow morning at
20 9:30.

21 I will also advise the jury of a memorandum which
22 has been distributed to court personnel which reads, in
23 effect, [Reading.]

24 "If Hurricane Floyd creates hazardous weather, the

1 announcement on both the radio and television stations, only
2 if court has been canceled. If no independent announcement
3 has been made, all courts will operate on a normal schedule."

4 So, I will advise them of that. But, it is time to
5 call it day, I believe. I'll call the jury in and I'll
6 answer the question to the jury in that it is the jury's duty
7 to recall the evidence that was submitted to them and
8 determine the facts of the case, based on that evidence.

9 Sheriff, if you will please, bring the jury in.
10 {Thereupon, the following proceedings take place in open
11 court, in the presence of the jury.}

12 THE COURT: All right. Mr. Jackson, I'm assuming
13 from the message that I received that you are the jury
14 foreperson. Is that correct, sir?

15 MR. JACKSON: That's correct.

16 THE COURT: All right. If you'll stand please and
17 let me just ask you a simple question and you'll answer it
18 yes or no. Stand up, sir, for just a moment.

19 Mr. Jackson, as foreperson of the jury, has the
20 jury reached a unanimous verdict?

21 MR. JACKSON: No, sir.

22 THE COURT: You haven't. You can be seated.

23 Members of the jury, I asked you that question because it is
24 time for us to call an end to the day's activities and for me

25 to send you home, in just a few moments and direct you to

1 return tomorrow morning, at 9:30.

2 In case, Members of the jury, you have questions of
3 the weather and what affect that might have on our court
4 schedule, I'll just read to you a paragraph from a memorandum
5 that has been circulated to the various courts in Mecklenburg
6 County.

7 "If Hurricane Floyd creates hazardous weather, the
8 Trial Court Administrator will place an independent
9 announcement on the local radio and television stations, only
10 if court has been canceled. If no independent announcement
11 has been made, all courts will operate on a normal schedule."

12 Members of the jury, in a few minutes then, I'll
13 need to send you home for the evening and direct that you
14 return tomorrow morning at 9:30.

15 If you do not, before coming to court, see or hear
16 an independent announcement on radio or television, then you
17 may assume all courts are operating on the normal schedule.

18 Members of the jury, in answer to questions that
19 you reduced to writing and delivered to the bailiff, which
20 was delivered to me, [Reading.]

21 "When did the victim hear the defendant's voice in
22 court"; and, how far from the scene of the crime is the
23 defendant's job?"

24 Members of the jury, I must answer your question by

25 advising you that all of the evidence has been presented to

1 you.. It would be your duty to reflect on the evidence that
2 has been presented to you to find the answers to questions
3 that you might have concerning evidentiary matters.

4 Members of the jury, as you leave, please remember
5 the instructions that I have given you in the past. Not to
6 discuss the case with anyone, even members of your own
7 family; don't allow anyone to discuss the case with you or in
8 your presence.

9 Members of the jury, don't have any contact at all
10 with people who are involved in this case; don't read or
11 watch or listen to any accounts of this case in the media,
12 should there be any coverage of it.

13 Members of the jury, keep your minds open, when
14 you're away from court. You should not reflect on the case.
15 Just try to put it out of your mind.

16 Please return tomorrow morning at 9:30 and not
17 resume your deliberations until you receive the verdict
18 sheets.

19 Where are the verdict sheets, ma'am? Thank you.
20 Sheriff, if you would please take the verdict sheets and
21 place them in this brown envelope and then give them to the
22 clerk for safekeeping.

23 DEPUTY SHERIFF: Yes, sir.

24 THE COURT: Members of the jury, you may consider
25 the return of the verdict sheets to you tomorrow morning as

1 your signal that you can resume your deliberations. Do not
2 resume your deliberations until then.

3 Members of the jury, I hope you have a good
4 evening. Be careful going home and listen to the weather
5 announcements, particularly as it might affect our court
6 schedule.

7 Remember again, if you do not hear any announcement
8 concerning court, court is operating on a normal schedule.
9 Members of the jury, please follow the bailiff's instructions
10 about when you should return to the jury room tomorrow
11 morning.

12 You can leave the courtroom now. Thank you.
13 {The following proceedings take place in open court, outside
14 the presence of the jury.}

15 THE COURT: In the absence of the jury, I will
16 hear if the state wishes to add anything to the record, also
17 including the Court's instructions to the jury.

18 What says the state?

19 MR. COTTRELL: No, Your Honor.

20 THE COURT: What says the defense?

21 MS. THOMAS: No, Your Honor.

22 THE COURT: All right. We'll be in recess then,
23 please sheriff, until 9:30 tomorrow morning.

24 {Court stands in recess.}

25 {Court reconvenes on September 17, 1999.}

1 THE COURT: The Court will note that all parties
2 are present in the trial that we were conducting on Wednesday
3 afternoon. As the parties know and the record should
4 reflect, court was canceled on Thursday due to what was
5 expected to be inclement weather.

6 I'm advised by the bailiff that all of our jurors
7 are present and I can have the jurors brought in, if the
8 parties would like to see them.

9 Does the state wish for the jury to be brought in?

10 MR. COTTRELL: No, Your Honor.

11 THE COURT: Does defendant wish the jury to be
12 brought in?

13 MS. THOMAS: No, Your Honor.

14 THE COURT: Sheriff, did any of the jurors
15 indicate any desire or anything that would need to be brought
16 by any juror to the Court's attention?

17 DEPUTY SHERIFF: No, Your Honor.

18 THE COURT: All right. The jurors are all present
19 in the jury room then; and, neither side wishes the jurors to
20 be paraded in; so, we will just deliver the verdict sheets
21 please to the jury, Sheriff. And, advise the jury we
22 appreciate their reporting and that they may resume their
23 deliberations.

24 DEPUTY SHERIFF: Yes, Your Honor.

25 THE COURT: I have the jury out at about 9:30

1 then. The parties in the Massey case may be at ease then.
2 Mr. Massey is in custody. Ms. Thomas, if you will, don't
3 stray too far, in case the jury does have a question.

4 [JURY DELIBERATIONS CONTINUE, at 9:35 a.m.]

5 THE COURT: We have set things up so that we may
6 continue the hearing we arranged in our other matter we began
7 on Monday.

8 [VERDICT OF THE JURY, at 11:15 a.m.]

9 THE COURT: All right. For the record, all
10 parties are present. So, I have been advised the jury has
11 reached a verdict.

12 Anything from the state before the jury is brought
13 in?

14 MR. COTTRELL: No, Your Honor.

15 THE COURT: Anything from the defense?

16 MS. THOMAS: No, Your Honor.

17 THE COURT: Sheriff, please let us have our jury.

18 {Thereupon, the following proceedings take place in open
19 court, in the presence of the jury.}

20 THE COURT: All right. The Court will note that
21 all our jurors are present. Members of the jury, I would ask
22 the foreman of the jury, please stand.

23 And, Mr. Jackson, again, please sir, for the
24 record, would you state your name?

25 MR. JACKSON: Louis Jackson.

1 THE COURT: I'll be asking perhaps two questions
2 and I will ask you to answer them just yes or no.

3 Mr. Jackson, has the jury reached unanimous
4 verdict?

5 MR. JACKSON: Yes, sir.

6 THE COURT: Has the jury reached a unanimous
7 verdict in each charge submitted to the jury for its
8 consideration?

9 MR. JACKSON: Yes, sir.

10 THE COURT: Mr. Jackson, if you will please sir,
11 give the verdict sheets to the bailiff and remain standing;
12 and, I'll ask the bailiff to bring them to me.

13 Mr. Jackson, you have returned a unanimous verdict
14 of the jury, in File No. 98-33739, State of North Carolina
15 Vs. Shawn Massey, that the jury finds the defendant, "Guilty
16 of second-degree kidnapping of Samantha Wood."

17 Mr. Jackson, was that the unanimous verdict of the
18 jury?

19 MR. JACKSON: It is, sir.

20 THE COURT: Mr. Jackson, you have returned as the
21 unanimous verdict of the jury in 98 CRS 33741, State of North
22 Carolina Vs. Shawn Massey, that the jury returns as its
23 unanimous verdict, that the defendant is "Guilty of second-
24 degree kidnapping of Leola Smith."

25 Sir, is that the unanimous verdict of the jury?

1 MR. JACKSON: It is, sir.

2 THE COURT: In 98 CRS 33740, the offense in State
3 of North Carolina Vs. Shawn Massey, Mr. Jackson, you have
4 returned as the unanimous verdict of the jury that the
5 defendant is "Guilty of second-degree kidnapping of Brandon
6 Wood."

7 Mr. Jackson, is that the unanimous verdict of the
8 jury?

9 MR. JACKSON: It is, sir.

10 THE COURT: And, in 98 CRS 141972, State of North
11 Carolina Vs. Shawn Massey, you have returned a unanimous
12 verdict of the jury that the defendant is "Guilty of
13 felonious breaking or entering."

14 Is that the unanimous verdict of the jury?

15 MR. JACKSON: It is, sir.

16 THE COURT: And, in 98 CRS 33738, State of North
17 Carolina Vs. Shawn Massey, you have returned as your
18 unanimous verdict of the jury that the defendant is "Guilty
19 of robbery with a dangerous weapon."

20 Is that the unanimous verdict of the jury?

21 MR. JACKSON: It is, Your Honor.

22 THE COURT: Members of the jury, would you all
23 please stand. Members of the jury, I will be asking you
24 essentially if you agree with the verdict as having been
25 returned as the unanimous verdict of the jury.

1 If you choose to answer, please answer out loud.

2 Members of the jury, your foreman has returned as
3 unanimous verdict of the jury in each case, that the
4 defendant is guilty. Those cases being, "Guilty of second-
5 degree kidnapping of Samantha Wood"; "Guilty of second-degree
6 kidnapping of Leola Smith"; "Guilty of second-degree
7 kidnapping of Brandon Wood"; "Guilty of felonious breaking
8 or entering"; and, "Guilty of robbery with a dangerous
9 weapon."

10 Members of the jury, if that is the unanimous
11 verdict of the jury, would you please answer by saying,
12 "Yes"?

13 JURY: Yes.

14 THE COURT: Members of the jury, would you please
15 be seated. And, one last time, Members of the jury, if this
16 is your unanimous verdict -- if these are the unanimous
17 verdicts of the jury, would you so indicate by raising your
18 right hand. Leave your hand up just a minute.

19 Seeing twelve hands being raised, thank you. You
20 can put your hands down.

21 Anything further of this jury, from the state?

22 MR. COTTRELL: Your Honor, the state would like to
23 thank the jury for their service.

24 THE COURT: Anything further for this jury, from
25 the defense?

1 MS. THOMAS: No, Your Honor.

2 THE COURT: All right. Members of the jury, this
3 will conclude your service in this case and will conclude
4 your service as jurors.

5 I do thank you, on behalf of the State of North
6 Carolina; not the state that was represented by the
7 prosecutor; but, just as a representative of the state
8 judicial system, for your service as a juror.

9 It's improper for a judge to comment on the verdict
10 of the jury. By my thanking you, I am making no comment on
11 your verdict.

12 Members of the jury, I apologize for the length of
13 time the case took, as compared to our original estimate. I
14 hope that the interruption yesterday did not create too much
15 of a problem for you. Maybe you were able to make use of the
16 time.

17 As I said, this does complete your jury service. I
18 have given you various instructions about your conduct as
19 jurors. You will be released from all of those instructions.
20 You can discuss now the case with whomever you might want.
21 You do not have to discuss the case with anyone; but, you may
22 discuss the case with anyone, if you wish.

23 Members of the jury, again, thank you very much for
24 your service. What will follow now is a sentencing hearing.

25 Members of the jury, if you would so request, it

1 probably can be arranged that you be allowed to remain for
2 that. If you do not wish to, your service would be completed
3 and you will be able to check out and you will be allowed to
4 go.

5 Members of the jury, if you wish, you may now
6 leave the courtroom. Thank you.

7 THE COURT: All right. Is the defense ready to
8 proceed with sentencing?

9 MS. THOMAS: We are.

10 S E N T E N C I N G H E A R I N G

11 THE COURT: All right. I will hear from the state
12 then. I have, of course, heard the evidence presented as to
13 the charges. And, I'll need to know a little bit about Mr.
14 Massey as to any prior record he might have or any other
15 factors that the state wishes the Court to consider.

16 MR. COTTRELL: Your Honor, the state does realize
17 the Court has heard the evidence in this case and we leave
18 sentencing in the Court's discretion.

19 I would inform the Court that the Prior Record
20 Level is three. If I may approach with the structured
21 sentencing work sheet.

22 THE COURT: Ms. Thomas, the prosecutor has just
23 advised me those written in red on the sheet do not count and
24 should not be regarded by the Court. And, that is what that
25 conversation was about.

1 MS. THOMAS: Yes, sir.

2 THE COURT: The state has computed the points.
3 Let's see, that's seven; 1 Class G felony, for which he would
4 receive four points; and, that was for sell and deliver of
5 cocaine charge.

6 And then, 3 Class 1 misdemeanors, for which he
7 would get one point each. The total of it being seven.

8 What says the defense as to the state's computation
9 of points?

10 MR. COTTRELL: May we approach, Your Honor?

11 THE COURT: Yes.

12 {Conference at sidebar, outside the hearing of this Court
13 Reporter, with all attorneys present.}

14 MR. MASSEY: I did that time already.

15 {Thereupon, the following proceedings take place in open
16 court, within the hearing of this Court Reporter.}

17 THE COURT: All right. The bench conference was a
18 discussion of the prior offense attributed to the defendant
19 of sell and deliver of cocaine. The concern by the state, a
20 reasonable concern, is whether that should be considered, for
21 sentencing purposes, as a Class H or Class G felony.

22 The Court would note that it would be then either
23 four points, if a Class G and two points, if Class H. Either
24 way, when added to the misdemeanors he would be within the
25 level of five to eight points.

1 However it is counted then, the Prior Record Level
2 would be a Level 3. I don't know then that it will really
3 make any sentencing difference.

4 I appreciate it being brought to the Court's
5 attention. I'm referring to, at the bench conference, I am
6 referring to 90-95, Subsection B-1, which reads, "A
7 controlled substance classified in Schedule 1 and 2 shall be
8 punished as a Class H felony, except for sale of controlled
9 substance, classified as Schedule 1 and 2 shall be punished
10 as a Class G felony. Cocaine comes under a Schedule 2."

11 I'll allow the defense to be heard, if the defense
12 wishes to be heard. And, as I said, I don't know if that's
13 going to make any difference in sentencing.

14 MS. THOMAS: Your Honor, I don't have my book with
15 me. I haven't looked carefully. I agree with the Court that
16 it would not make any difference. But, I still believe,
17 under the law existing in 1995, it would have been Class H.

18 But again, I do not believe it would affect the
19 sentencing.

20 THE COURT: Okay. Thank you. Anything else from
21 the state then?

22 MR. COTTRELL: No, Your Honor.

23 THE COURT: Is there restitution? Any other
24 factors for sentencing that the state needs to bring in of
25 any kind?

1 MR. COTTRELL: Your Honor, the restitution should
2 be due is \$60.00 taken in the robbery. That's the only
3 monetary restitution due.

4 THE COURT: All right. I'll hear from the defense
5 then. Anything the defense wish to say for sentencing
6 purposes first.

7 MS. THOMAS: Yes, Your Honor. I would like to
8 begin by having Mr. Massey speak.

9 THE COURT: That's fine.

10 MS. THOMAS: And then, his aunt would like to be
11 heard also.

12 THE COURT: That's fine. And, you can present the
13 witnesses in any manner you wish. They can be sworn or I'll
14 hear them in presentation form or sworn; as you wish.

15 MS. THOMAS: We would present un-sworn testimony,
16 Your Honor.

17 THE COURT: That's fine.

18 MR. MASSEY: I have never seen this lady in my
19 life. I hate that she was victimized like this. And, I
20 don't understand how -- I'm kind of in shambles right now
21 because I have never possessed a gun; I never owed a gun; I
22 never held one in my hand.

23 I love kids. I'm not the kind of person that will
24 pull a gun on a person and take somebody's goods. I work
25 hard. I do work.

1 This lady, to me, in my heart, I feel that she
2 falsely accused me of a crime I did not commit. I feel that
3 the State of North Carolina has put these charges on me
4 because of the simple fact that I'm a Black male and I'm
5 young, in North Carolina.

6 And, I feel this way because I was locked up, came
7 to jail, before this even transpired; and, I was in jail on a
8 possession of a stolen vehicle charge. I made bond. And,
9 after that, two months later, I got hit with these charges,
10 which is armed robbery and breaking and entering and
11 kidnapping of this woman and her kids, which I never seen her
12 in my life. I never even behold her to the other day, when I
13 seen her.

14 I got these charges. The judge first told me that
15 the charges were in Memphis, Tennessee. Then they said I was
16 on state-wide in Mississippi; say the charges was in
17 Mississippi say that I was on state-wide warrant for my
18 arrest; state-wide.

19 I never even had a chance to even -- I haven't
20 never seen the lady in order to rob her.

21 Now, I have a friend and a godmother that lives
22 down there. And, in these same apartment complex that have
23 lived there, previous, before this. Then, after they moved
24 out to a condominium, they moved back. And, I had just got
25 out of prison.

1 And therefore, like I say, I hadn't never seen the
2 lady, yet still, I'm convicted, about to get sentenced with
3 half my life for \$60.00.

4 And, I don't understand. If that was the case, if
5 I would have did it to this lady or whatever, I think I would
6 rather tried reconcile it on the street or say, "Ms. Lady, I
7 rather just pay you."

8 But, I came to trial thinking I would get judged
9 fairly on the charges. And, I don't think that I was judged
10 fairly on the charges. There is a lot of things why I feel
11 this way because, you know, a lot of reasons. And yet-and-
12 still, I haven't never seen this lady. This lady said this
13 person was totally different description from me and yet-and-
14 still, I have been found guilty of these charges, which I
15 can't understand in my mind.

16 I can't get it to reconcile in my heart to where
17 I'm considered to go to prison for somebody's negligence
18 behind somebody that I never seen in my life. And, I don't
19 take people's goods. I have never taken nothing from nobody.
20 I ain't never have to.

21 THE COURT: All right, sir. Thank you very much.
22 I'll hear other evidence from the defense, for sentencing.

23 MS. THOMAS: Your Honor, I think that Ms. Linda
24 Brown would also like to be heard, if she can.

25 THE COURT: All right.

1 MS. BROWN: I'm standing here, Your Honor.

2 COURT REPORTER: Excuse me. If she is not
3 going to speak up, she'll have to come up to the witness
4 stand.

5 MS. BROWN: My name is Linda Brown. And, I'm
6 standing here, Your Honor, to say that I have two older sons;
7 one is not a very good boy; but, Shawn, he's been a good boy.
8 And, what I mean is his mother died of cancer; and, cancer is
9 a terrible disease.

10 She suffered so long and Shawn was just a boy, you
11 know, in junior high school and maybe a couple years; I think
12 maybe 9th grade. And, they had it real bad. And, not only
13 that she was -- she had a problem, as far as the
14 understanding things.

15 And, his father was here in Charlotte; but, his
16 father didn't help him, you know, him and his mother.. And,
17 you know, the grandmother's husband had terrible disease and,
18 you know, he had about 15 operations; so, she was lot
19 involved in that.

20 Shawn was placed in a foster home and sent back and
21 forth too, with kids. And, they went through a lot, you
22 know, just two of them. And, the mother didn't have good
23 understanding how to work through the system and I was
24 crippled all up, you know.

25 And, I know that can affect kids when they get

1 about 13 or 14 because I'm raising a 17-year old now that's
2 starting to acting up. But, you know, that happens; they fed
3 him and clothed him and stuff and made him go to church.
4 But, I, myself, I'm just, Your Honor, learned -- listened to
5 all of this here. I will keep up with things because I'm a
6 minister; I've been a minister 33 years; and, I keep up with
7 things.

8 And, I'm not criticizing, you know, people doing
9 jobs when they had proof that -- that it wasn't proved that
10 he was in the house. And this boy getting ready to get
11 sentenced the rest of his life.

12 I would just like you to take into consideration
13 his life style as a child. A young Black boy, going to
14 Charlotte-Mecklenburg Schools and he wanted to play football
15 and he had a hard time getting his cleats.

16 And then, he wanted to drive and he had a hard time
17 passing his license thing. And, it wasn't because he was
18 mentally retarded or anything; just when he was with the
19 mother that's real sick, like his mother was; not able to
20 help him.

21 And, we tried to help him, you know. And, at that
22 time, he was '80's, you know, I have the mother that you seen
23 with Alzheimer's. I've had 37 years who couldn't give him
24 all that we can give him.

25 I feel like we failed him, too; because, we have

1 not been able to give him what he needs.

2 And, would you please just maybe -- I don't know
3 how you -- I do know that you have to do your job; everybody
4 does. But, he had it pretty bad; he's been here a year and-
5 a-half, going on two years, in the jails.

6 And, I go to the jails and I have -- they give me
7 authority to go to the jail and I go to the prison and things
8 like that myself. And, I know I've seen him like just skin
9 and bones and just suffering all the time.

10 I feel like this might be the worst turning point
11 in his life, as far as being a human being. If he have to go
12 now, it's probably his life's going to be over.

13 But, he has a father now that, you know, and, you
14 know how they do when they get in trouble. One of my sons
15 didn't; one of my sons I came and asked the judge to put him
16 in jail.

17 I'm not asking you because I wanted -- see, I had
18 to take my son and put him down there, Your Honor. But,
19 Shawn has suffered so, since he was about -- I think his
20 mother started getting sick when he was about seven, you
21 know, years old; with my mother, couldn't do very much;
22 granddaddy's leg and everything cut off; and, all this kind
23 of stuff. Me, I was in a wheelchair.

24 And so, he feels like maybe he didn't get enough,
25 you know, of our love and dying. You know, you can't do too

1 much when you're living with your mother. Every since she
2 died, he's been a different person, as far as his
3 personality.

4 I mean, he never disrespected me; but, I know I
5 noticed, just like I never seen him talk out. I know he's
6 very afraid of what's getting ready to happen to him. And, I
7 don't want to see his life just destroyed.

8 I know what she said. And, I have two daughters;
9 one a teacher and one that's a lawyer. I don't want to see
10 that happen to my daughters. But, I do think people should
11 have a little bit of proof when they say things about
12 people.

13 As I said, I never seen him with --

14 MR. MASSEY: I ain't never seen her.

15 MS. BROWN: I feel like maybe I should have done
16 more by his mother; she's a young girl; she died at 37, 36
17 years old. And, he never had a father. Just difficult for
18 kids in school. He couldn't get a lot of things, you know.
19 My kids couldn't either.

20 And, I know that's no excuse for anything that he
21 didn't have a piece of candy; but maybe he can get some kind
22 of counseling, as well as something where he might could get
23 a chance in this country and in this city, state, just one
24 more time. Something that finds out what's going on inside.

25 I saw a broken little boy, about ten years ago.

1 He's just 26; that's when he was 16, you know, going through
2 the teenage years.

3 And so, I just wanted to say that. I just don't
4 understand. It wasn't right. Just wanted to say that if you
5 could Judge, just -- if you could just -- if you put him away
6 in prison, with the system, his life is destroyed and I know
7 he can't do nothing with these big guys.

8 And, since that they didn't prove he was in the
9 house, I don't know how he could just get sent away like
10 this. I have never been to court in years, you know. But, I
11 know he was having a real bad -- you know, teenagers, you
12 know, and won't listen to his grandmother when he's there,
13 having to go to church.

14 She's got grandchildren there now; granddaddy just
15 died, the one he cooked for, he just died, while Shawn was in
16 the prison -- I mean, the jail here. And, he's been in jail
17 almost two years; no period; no nothing; just the terrible
18 thing I ever seen.

19 Please, if you can give him some mercy on him, it
20 probably would help him; give him another chance; because,
21 going to prison today, it will never -- he will never leave.
22 I don't think it will ever, ever get any help.

23 THE COURT: Thank you very much, ma'am. I'm glad
24 you're here. And, I'm sure Mr. Massey and his family
25 appreciate your being here, very much.

1 I would just advise you actually, my sentencing
2 options are pretty limited as to what I would be able to do
3 in this case.

4 I'll hear from the defense counsel now, anything
5 you would like to add, Ms. Thomas.

6 MS. THOMAS: Your Honor, I understand that we're
7 taking some time with this; but, Mr. Bobby Ross has just
8 indicated that he would like to be briefly heard, if the
9 Court would please.

10 THE COURT: That's all right. Mr. Ross, just
11 stand where you are, sir. I will be happy to hear you.

12 MR. ROSS: First of all, I will be as brief as
13 possible. I would like to say, you know, my heart goes out
14 to the victim here. You know, what happened to her was a
15 horrible thing. And, Shawn is a personal friend of mine.
16 I've known him for about three years.

17 I wouldn't be here if I really believed that he had
18 done this crime. And, I've never, before now, had to come to
19 court for any reason, other than traffic tickets, and sat in
20 on any trial of any sort.

21 However, after sitting in on this trial, you know,
22 I'm almost motivated to become a trial attorney because the
23 prosecution, they put on a great case and in spite of them
24 having a very weak case against him.

25 And, you know, it is my belief, as much as I like

1 Janet, there wasn't enough time preparing for these cases.

2 This case was a winnable case.

3 I, and his grandmother, we will, after this, you
4 know, get together and we will get Calvin Murphy to appeal
5 this and to overturn it because what has happened here today
6 or over the course of the last couple days, shouldn't have
7 happened.

8 There were things that went on. I'm a lay person;
9 I'm not an attorney. But, you know, having a uniformed
10 officer get up there and say to the jury about his experience
11 as far as the fingerprinting and what not, that shouldn't
12 have happened.

13 There were several things that I saw, as a lay
14 person, that shouldn't have happened. And, you know --

15 THE COURT: Mr. Ross, I'll be happy to hear
16 anything you want to say on behalf of Mr. Massey. The manner
17 in which I conducted the trial is -- Mr. Massey has a right
18 to appeal that and more power to him. But, that's not going
19 to change how I sentence Mr. Massey.

20 If you want to say things about Mr. Massey, which
21 would help me sentence him, I would be happy to hear anything
22 you want to say about Mr. Massey.

23 MR. ROSS: Well, you know, he does have a
24 troubled past; that is clear. And, you know, there is no
25 excuse for breaking the law at any time, as far as I'm

1 concerned.

2 However, in this incident, you know, it is my
3 belief that he didn't do this. The reason I am here is
4 because in his support, because, I don't believe that he did
5 it. And, you know, I just think it's a tragedy what's
6 happened here, over the last couple of days.

7 THE COURT: All right. Thank you, sir. Anything
8 else from the defense?

9 MS. THOMAS: If Mr. Massey could briefly be heard
10 again, Your Honor.

11 THE COURT: All right. And then, I'll allow
12 counsel to be heard. Go-ahead, Mr. Massey.

13 MR. MASSEY: Like in my motion, right, you know, I
14 was wondering, you know, it was a lot of things that was
15 blank in my motion.

16 And, as far as the hair, I have like, you know, my
17 people was saying, I never had long hair. Now, I had it to
18 where the picture that they showed me, little longer hair, I
19 was going -- my mom had passed then and I was mentally burned
20 out. I was really mentally [restormed.]

21 I mean, like I stated, three or four months,
22 rebuilding, mentally on -- I, really, I was sitting on my
23 grandma's porch, wondering when my mom was going to come back
24 through the door.

25 But, you know, I don't want no sympathy because of

1 the point that I didn't do it. Lord knows I didn't do it.
2 And, that's what I'm going on right there. So, any way you
3 look at it, and you sentence me, the Lord's going to overturn
4 it and it's going to turn out for me, any way.

5 Maybe this is a blessing from God, in disguise.
6 Really, which I think it is; because, when I had the attorney
7 come in again, it won't be her; and, it won't be nobody in
8 this courtroom. It will be this one. He's going to come and
9 talk to me.

10 So, however it go, it don't matter now. But, I do
11 wish you would have some leniency on me. Like I said, I feel
12 sorry for this woman. I ain't never seen her.

13 Ms. Lady, if you accused, I'm sorry that it
14 happened to you like it did and your kids. I love kids.
15 And, to your husband there, I would never -- One thing I
16 would never do, I'll never take a women and try to mess with
17 her, sexually. But, I would never do nothing to any kids, at
18 that.

19 But, I feel sorry for you and I feel when I see you
20 in heaven again, I hope to be sitting there where I can see
21 you, if you make it there, so I can tell God, "That's the
22 woman who falsely accused me and I'm fixing to be rich, after
23 this is over with."

24 THE COURT: All right. Thank you, Mr. Massey.

25 Ms. Thomas, I'll hear you, on behalf of Mr. Massey.

1 MS. THOMAS: Your Honor, Mr. Massey is 27 years
2 old.

3 MR. MASSEY: Twenty-six.

4 MS. THOMAS: He has a very supportive family and
5 have been here most of the week for him. His grandmother,
6 his godmother, his aunt and a family friend and many other
7 family members have been here to show their faith and believe
8 in Mr. Massey.

9 He has a seven year old son and I understand from
10 the family that he is rather involved in his son's life and
11 does his best to provide for the son.

12 For those two reasons, we would ask the Court to
13 find mitigating factors. We would also ask that because this
14 was one occurrence that happened at the same -- during the
15 same course of events, that the Court consolidate these cases
16 for sentencing, under the robbery with a dangerous weapon.

17 And, fortunately, Ms. Wood was released, unharmed,
18 when she was going to be, there was some talk about sexually
19 taking her. She said, "No; I can't," and she was not
20 attacked or touched in any way.

21 So, Your Honor, we do ask for consolidation of the
22 sentences and we do ask the Court to find two mitigating
23 factors.

24 THE COURT: Thank you. Mr. Massey, stand up,
25 please, sir. All right. Madame Clerk, if you will take this

1 as the judgment. There will be two judgments.

2 Mr. Massey, I'm going to sentence you under the
3 provisions of law; the Court is not determining whether or
4 not a person is guilty or innocent of the crime. That is a
5 factual determination for the jury.

6 The state selected the jury and the jury has
7 spoken. You are, therefore, under the law, guilty of these
8 charges.

9 I suppose the only thing that I really disagree
10 with that you said, Mr. Massey, without making any comment on
11 your protesting your innocence is about your counsel. I
12 think your attorney has done an excellent job representing
13 you, sir.

14 I think you had, in your proceeding the state's
15 strong point was the identification of you by the victim.
16 And, your attorney made an effort to suppress that
17 identification. That was a matter of law which I ruled on.

18 The matter in your behalf was differing accounts of
19 descriptions, as far as your hair. Your counsel certainly
20 made the most of that and presented quite a bit of evidence
21 on that.

22 That was not sufficient though, sir, for the jury
23 not to be able to be convinced. A jury of 12 people who were
24 not there, that you were in fact guilty of these charges,
25 beyond a reasonable doubt.

1 As I think everyone has admitted, what happened to
2 Samantha Wood and her family were terrible things. And, the
3 law has provided in sentencing to fall within pretty much a
4 narrow range of options for a presiding judge.

5 As your attorney has argued, the Court has the
6 ability to run all the charges consecutively or combined them
7 or to make some variations of that.

8 As far as an active sentence or not, that is not in
9 the Court's discretion.

10 I will sentence then, according to the sentencing
11 provisions and this will be the sentence. Beginning first
12 with the charge in File No. 98 CRS 33738, the charge of
13 robbery with a dangerous weapon.

14 The Court will note that in this case the defendant
15 has been present throughout the hearing; is represented by
16 counsel and has been found guilty, by a jury, of the charge
17 of robbery with a dangerous weapon.

18 The date of the offense was May 22, 1998; the
19 offense is a violation of 14-87. It is a Class B felony.
20 The Court has determined that there are seven points for
21 sentencing purposes, which would put this Prior Record Level
22 3. There is some condition that instead of seven points, it
23 should be computed as five. Either way, it still falls
24 within a Prior Record Level 3.

25 The Court has examined aggravating factors and

1 mitigating factors. However, the Court chooses to sentence
2 within the presumptive range of sentences and will make no
3 findings of aggravation or mitigation.

4 Having considered the evidence, arguments of
5 counsel and statements of the defendant, the Court does ORDER
6 that the defendant be IMPRISONED FOR A MINIMUM TERM OF ONE-
7 HUNDRED, THREE (103) MONTHS AND A MAXIMUM OF ONE-HUNDRED,
8 THIRTY-THREE (133) MONTHS in the custody of the Department
9 of Corrections.

10 The defendant shall be given credit for all the
11 time he has spent in custody, prior to this date, as a result
12 of these charges -- or, result of this charge.

13 Madame Clerk, in the second judgment, this will be
14 in the kidnapping charges and the breaking and entering
15 charge.

16 In these charges, the Court will note the defendant
17 has been present throughout the proceedings, represented by
18 counsel and having been found guilty, by a jury, to a charge
19 of second-degree kidnapping, in File No. 98 CRS 33739;
20 another charge of second-degree kidnapping, and a third
21 charge of second-degree kidnapping, in File Nos. 98 CRS 33740
22 and 33741.

23 All of these are Class E felonies, punishable under
24 General Statute 14-39; also occurring on May 22, 1998.

25 The defendant has also been found guilty, by a
Case 3:11-cv-00477-RJC-DCK Document 13-10 Filed 11/18/11 Page 151 of 157

1 jury, of a charge of breaking and entering. This is Case No.
2 98 CRS 141972, a violation of 14-54A, a Class H felony.

3 The Court determines that there are seven points
4 for sentencing in these charges and will sentence in the
5 Prior Record Level 3.

6 The Court will make the same notations that it has
7 been contended that the points should be five. However, that
8 would still place it in a Prior Record Level 3 and the Court
9 will sentence accordingly.

10 The Court has examined the aggravating and
11 mitigating factors and feels that the presumptive sentence is
12 appropriate and will then sentence within the presumptive
13 range of sentencing, without finding aggravating or
14 mitigating factors.

15 Having considered the evidence, the arguments of
16 counsel, the statements of the defendant, the Court will
17 ORDER that THE FOUR CHARGES BE CONSOLIDATED AND ORDER THE
18 DEFENDANT BE IMPRISONED FOR A MINIMUM TERM OF THIRTY-FOUR
19 (34) MONTHS AND A MAXIMUM OF FIFTY (50) MONTHS in the custody
20 of the North Carolina Department of Corrections.

21 No credit is given in these charges, as all the
22 credit for time in custody is being applied in the preceding
23 case.

24 THIS SENTENCE SHALL BEGIN AT THE EXPIRATION OF THE
25 SENTENCE WHICH IS IMPOSED IN File No. 98 CRS 33738, AND SHALL

1 NOT RUN CONCURRENTLY THEREWITH.

2 The sentencing is concluded then, unless there are
3 any questions concerning the sentence.

4 Anything from the state?

5 MR. COTTRELL: No, Your Honor.

6 THE COURT: Anything from the defendant?

7 MS. THOMAS: No, Your Honor.

8 THE COURT: All right. Mr. Massey, good luck to
9 you, sir. The defendant is in your custody.

10 MS. THOMAS: Your Honor, may I be heard?

11 THE COURT: Yes.

12 MS. THOMAS: Your Honor, Mr. Massey has requested
13 that NOTICE OF APPEAL BE ENTERED. I would make a motion to
14 withdraw as counsel and that the Public Defender's Office be
15 appointed.

16 THE COURT: All right. Does the state wish to be
17 heard, in any way, on the Notice of Appeal or any procedure
18 thereto?

19 MR. COTTRELL: No, Your Honor.

20 THE COURT: All right. The Court is vested
21 jurisdiction by giving Notice of Appeal. The record should
22 reflect that the defendant has, in open court, given oral
23 Notice of Appeal.

24 Counsel in this case, Ms. Janet Thomas, is allowed
25 to withdraw and shall not be appointed as appellant. The

1 Court will appoint the Public Defender's Office.

2 Did you mean the Public Defender's Office here or
3 the Appellate Defender's Office? It may be that the
4 Appellate Defender's Office does not automatically accept
5 these cases. I know they are limited in what they do. Or,
6 were you make a specific request beyond that?

7 MS. THOMAS: I intended to request the Public
8 Defender's Office.

9 THE COURT: I'll put that down and then put as
10 secondary counsel, if there is some reason the Public
11 Defender's Office could not do it, the Appellate Defender
12 could.

13 THE CLERK: Usually the Public Defender's Office
14 has someone who handles appeals. If they can not handle it,
15 they farm it out, if you just appoint the Public Defender's
16 Office.

17 THE COURT: All right. I'll do that then. I'll
18 just appoint the Public Defender's Office to handle the
19 appeal.

20 And, the Court DECLINES TO MAKE ANY RECOMMENDATION
21 FOR RELEASE AND WILL NOT SET ANY RELEASE CONDITIONS, PENDING
22 APPEAL.

23 The defendant is in your custody. Good luck, Mr.
24 Massey.

25 MS. THOMAS: Thank you, Your Honor.

1 THE COURT: Sheriff, go-ahead and recess sine die.
2 Wait, just recess until Monday morning. I guess,
3 technically, we're still in a long-term proceeding for the
4 capital case. Just recess court until then.
5 {Court stands in recess.}

6 [END OF PROCEEDINGS.]

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
98 CRS 33738, 39,40,41,
98 CRS 141972

STATE OF NORTH CAROLINA)

VS.)

SHAWN GIOVANNI MASSEY)

Defendant.)

CERTIFICATE

I, the undersigned Commissioner, **DO HEREBY CERTIFY**
that the foregoing **Three-hundred, Thirty-eight (338)** pages
constitutes a true and accurate transcript of the proceedings,
as taken stenographically and transcribed by me.

I FURTHER CERTIFY, that I am not of counsel for any
of the parties to this action; that I am not related by blood
or marriage to any of the parties; nor am I interested, either
directly or indirectly, in the results of this action.

I CERTIFY this is a **TRUE COPY** of the original
transcript herein, and that same is **VALID ONLY IF IT BEARS MY**
RAISED SEAL, followed by my printed name.

WITNESS BY HAND AND SEAL, this **31st** day of **December**,
1999.



Josephine Garrett-Coley
Official Court Reporter

My Commission Expires, July 31, 2000.

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
98 CRS 33738, 39,40,41,
98 CRS 141972

STATE OF NORTH CAROLINA

VS.

SHAWN GIOVANNI MASSEY

Defendant.

)
)
) CERTIFICATE OF DELIVERY
)
)
)

THIS IS TO CERTIFY that the transcript in the above-entitled case was requested of **Josephine Garrett-Coley**, Official Court Reporter for the 26th Judicial District, on or about **September 21, 1999** and was delivered and/or mailed to the persons indicated below, on January 3, 2000.

WITNESS BY HAND AND SEAL, this 31st day of December, 1999.



Josephine Garrett-Coley
Official Court Reporter

My Commission Expires, July 31, 2000.

Eric Cottrell
Assistant District Attorney

Office of the Public Defender